

# Part-Time Government

KELLEN ZALE\*

*Part-time government is the rule, not the exception, for cities in the United States. The vast majority of the 20,000 cities in the U.S.—eleven out of every twelve—are governed by part-time local legislatures. From small towns to major urban metropolises, the fate of cities collectively responsible for billions of dollars in public revenues and expenditures is determined by city council members who often volunteer their time for minimal pay and juggle public service with full-time outside employment.*

*This Article contends that the part-time model has systematic implications for city power that have gone unrecognized. All things being equal, a part-time city council has less power, in terms of capacity, resources, and political capital, than a full-time city council. Where does that power go? On one hand, the diminished power of part-time city councils may mean that power goes unexercised: ordinances that are never passed, city services that are never funded, intergovernmental agreements that are never entered into. On the other hand, the diminished power of part-time city councils may mean that power gets redistributed to other institutions, such as states, other city officials, other units of local government, and private actors, which exercise power in ways that may diverge from how that power would have been exercised by city councils.*

*Recognizing these power dynamics leads to a further normative question: Is part-time government in American cities a problem? In mid-size and larger cities in particular, the question of whether city council should remain part-time is a recurring and often highly contentious issue. Drawing on political science and public administration scholarship, this Article offers a systematic assessment of the power dynamics of part-time city councils and develops a set of normative guideposts that can inform the often highly politicized debates about part-time government. By thinking more deeply about factors that lend legitimacy to city councils as decision-makers, such as the representation of a diversity of interests, democratic accountability, and local autonomy, as well as factors that may cut in the other*

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*direction, such as concerns about efficiency, expertise, and metropolitan fragmentation, this Article makes a novel contribution to the local government literature and offers a framework to clarify and refine our intuitions about the connections between institutional design and city power.*

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## I. INTRODUCTION

Part-time government is the rule, not the exception, for cities in the United States.<sup>1</sup> The vast majority of the 20,000 cities in the United States—eleven out of every twelve—are governed by part-time city councils.<sup>2</sup> From small towns of a few hundred residents to major urban metropolises like Dallas and Phoenix,

<sup>1</sup> This Article uses the term “cities” to refer generally to incorporated municipalities that are general purpose local governments. However, depending on state law, other designations may be used, such as village, borough, and town. Throughout this Article, I use the phrases “local legislature” and “city council” interchangeably as generic terms referring to the local legislative body in an incorporated place. Other labels may also be used to refer to this entity, such as “Board of Supervisors” or “City Commission.”

<sup>2</sup> See, e.g., James H. Svara & Jennifer Claire Auer, *Perspectives on Changes in City Government Structures*, in 80 THE MUNICIPAL YEARBOOK 2013, at 17, 29 (2013) (“The vast majority of city councils have part-time members. Only 260 cities (8%) reported having full-time members and another 45 have a combination of full- and part-time members. . . . This proportion of 1 in 12 cities with full-time members is fairly consistent across city population sizes . . . .”); H. GEORGE FREDERICKSON ET AL., THE ADAPTED CITY: INSTITUTIONAL DYNAMICS AND STRUCTURAL CHANGE 125 (Richard D. Bingham & Larry C. Ledebur eds., 2004) (“The norm in American cities is to have part-time councils.”).

the fate of cities collectively responsible for billions of dollars in public revenues and expenditures is determined by city councils whose members typically volunteer their time for minimal pay and juggle public service with full-time outside employment.<sup>3</sup>

The part-time model represents a remarkably persistent pattern across cities, despite vastly different populations, demographics, public needs, and resources.<sup>4</sup> Furthermore, the part-time model has a remarkably sticky institutional design outcome: even as cities grow in size and diversity, and are faced with more numerous and complex policy problems, departures from the part-time model remain relatively rare.<sup>5</sup>

A number of arguments can be made in favor of or against the part-time model as an institutional design choice. These range from concerns about its potential to limit elected office to only those who can afford to serve and potential impacts on the diversity of elected leaders;<sup>6</sup> to questions about the representativeness of an institution whose members may need to regularly recuse themselves because of conflicts related to their outside employment;<sup>7</sup> to

<sup>3</sup> See THOMAS GINSBERG ET AL., PEW CHARITABLE TRUSTS' PHILA. RESEARCH INITIATIVE, CITY COUNCILS IN PHILADELPHIA AND OTHER MAJOR CITIES: WHO HOLDS OFFICE, HOW LONG THEY SERVE, AND HOW MUCH IT ALL COSTS 10 (Larry Eichel ed., Feb. 2011), <http://www.pewtrusts.org/~media/assets/2011/02/02/citycouncilphiladelphia-majorcitiespdf.pdf?la=en> [<https://perma.cc/GSN2-W8HL>].

<sup>4</sup> See David M. Lawrence, *Local Government Officials as Fiduciaries: The Appropriate Standard*, 71 U. DET. MERCY L. REV. 1, 2–3 (1993).

<sup>5</sup> Cf. Kellen Zale, *Compensating City Councils*, 70 STAN. L. REV. 839, 871 n.152 (discussing one recent example of an anomalous change in San Antonio, Texas).

<sup>6</sup> See, e.g., Katie McKellar, *Despite Political 'Awkwardness,' Salt Lake City Council Considering Giving Themselves a Pay Raise*, DESERET NEWS (Nov. 27, 2018), <https://www.deseretnews.com/article/900044102/despite-political-awkwardness-salt-lake-city-council-considering-giving-themselves-a-pay-raise.html> [<https://perma.cc/R3R2-PFPE>] (“[T]he council’s work has evolved over the years and the argument could be made the current pay rate hasn’t kept pace with the demands of the job, and perhaps could block regular Joes from serving on the council if they can’t afford to take time away from their day jobs.”); Morgan Smith, *Part-Time Legislature Can Create Financial Hardship*, TEX. TRIB. (Feb. 14, 2013), <https://www.texastribune.org/2013/02/14/part-time-legislature-can-create-financial-hardship/> [<https://perma.cc/64MQ-RGCU>] (“The state’s founders envisioned the part-time Legislature as a place where there would be no room for full-time politicians. Tying lawmakers to their districts for all but five months every two years would keep them connected to the constituents they had been elected to serve. But in the modern Legislature, the paltry pay that goes along with being expected to earn a living elsewhere can have the opposite effect—narrowing the ranks of potential office-holders to only those who can afford to do it full time.”).

<sup>7</sup> See ANDREW STARK, CONFLICT OF INTEREST IN AMERICAN PUBLIC LIFE 11 (2000) (discussing various remedies to address conflicts of interest and noting that recusal is “a relatively appropriate remedy for officeholders performing quasi-judicial functions, since in most cases one judge can easily replace another. But it remains ill-suited for those executing quasi-legislative responsibilities. As the legal scholar Peter Strauss puts it, recusal ‘may, by changing [a] commission’s balance, disturb an intended and legitimate political judgment . . . .’” (alteration in original)); Patricia E. Salkin, *Crime Doesn’t Pay and Neither*

the challenge of developing ethics rules that provide adequate disclosure and transparency about part-time lawmakers' outside interests without imposing requirements that are so onerous that they become a deterrent to public service.<sup>8</sup> Conditions in growing mid-sized and larger cities, where there is a greater diversity of competing interests and more numerous and complex governance needs, further heighten concerns about the welfare consequences of a part-time local legislature, as evidenced by recurring and often highly contentious debates about the part-time status of city councils in these cities.<sup>9</sup>

While political science and public administration literature has explored some aspects of the part-time model of governance, most prominently in the context of state legislatures,<sup>10</sup> scholars have largely overlooked the question of whether the part-time model might have distributional consequences for city power. This Article is an attempt to remedy this oversight. I contend that the part-time model affects power dynamics in cities in ways that existing scholarship has not adequately grappled with.

*Do Conflicts of Interest in Land Use Decisionmaking*, 40 URB. LAW. 561, 564 (2008) (noting that conflicts of interest rules for part-time local officials "can create havoc when a majority of the members of a board recuse themselves from participation and voting. For example, a recent news account from Aspen, Kentucky reported that all city council members, except the mayor, chose to excuse themselves from voting on critical land use applications, citing conflicts of interest.").

<sup>8</sup> See, e.g., George F. Carpinello, *Should Practicing Lawyers Be Legislators?*, 41 HASTINGS L.J. 87, 100 (1989) (noting that in state legislatures, the "citizen-legislature ethos has proved a significant barrier to serious discussion and resolution of the lawyer-legislator conflict of interest"); Lawrence, *supra* note 4, at 2–3 ("In the great majority of local governments, the elected officials who run the government—the members of the city council, the town board, the county commission, the school board—are part-time officials. While they are elected officials, they are also active farmers, business people, professionals, and the like. They derive their principal income not from their elected positions but from their private sector occupations. . . . Often some of those local lawyers, business owners, or contractors will also be on the town's governing board, and the question then arises: when can a town do business with one of its elected officials?").

<sup>9</sup> See, e.g., Nick Coltrain, *Fort Collins Voters to Decide Whether City Council Members Should Get Full-Time Pay*, FORT COLLINS COLORADOAN (Dec. 16, 2018), <https://www.coloradoan.com/story/news/2018/12/17/city-council-pay-april-election-fort-collins/2313667002/> [<https://perma.cc/8J5E-P7QM>]; McKellar, *supra* note 6; Steve Salvatori & Mike Allen, *City Council Salary: The Job Is Part-Time; Let the Voters Decide*, SPOKESMAN-REV. (Apr. 17, 2016), <http://www.spokesman.com/stories/2016/apr/17/the-job-is-part-time-let-the-voters-decide/> [<https://perma.cc/6FDL-TS44>]; Rob Turner, *Time for Sacramento to Create a Full-Time City Council*, SACRAMENTO BEE (July 30, 2016), <https://www.sacbee.com/opinion/california-forum/article92418737.html> [on file with *Ohio State Law Journal*].

<sup>10</sup> See, e.g., PEVERILL SQUIRE & GARY MONCRIEF, *STATE LEGISLATURES TODAY: POLITICS UNDER THE DOMES* 65–73 (2d ed. 2015) (discussing the part-time model and trends in the professionalization of state legislatures).

All things being equal, a part-time city council has less power—in terms of capacity, resources, and political capital—than a full-time city council.<sup>11</sup> Where does that power go? On one hand, the diminished power of part-time city councils may mean that power goes unexercised: ordinances that are never passed, city services that are never funded, intergovernmental agreements that are never entered into.<sup>12</sup> On the other hand, the diminished power of part-time city councils may mean that power is redistributed to other institutions, such as states, other city officials, other units of local government, or private actors, each of which exercising power in ways that may diverge from how that power would have been exercised by city council.<sup>13</sup>

The recognition that the part-time model produces power vacuums and redistributes power away from city councils invites a further normative question: How much power should city councils have? In part, the answer depends on one's view of the role of city councils: Are they more likely to be sites of small-scale civic engagement and valuable laboratories of democracy, or sources of unnecessary layers of regulation, prone to policymaking that imposes spillovers and undercuts statewide uniformity concerns? Judgments about council members are also relevant: Are local legislators uniquely well-positioned to act on matters of local import, or do they pose a risk of being well-intentioned but underqualified, drawn from a limited pool of candidates, many of whom may have personal interests at stake due to their outside employment?

Answering these questions is no simple task: they form the basis of much of the foundational literature of local government law. While much more could be written about each of these issues, a comprehensive reckoning of all of the policy and legal implications of the part-time model is beyond the scope of this project. The more modest goal of this Article is to hone in on how the part-time model impacts the power of city council vis-à-vis other institutional actors, and why those power dynamics matter. Drawing on political science and public administration scholarship, this Article develops a set of normative guideposts that can inform the often highly politicized debates about part-time government. I suggest that by focusing on factors that lend legitimacy to local legislatures as decision-making entities, such as the representation of a diversity of interests, democratic accountability, and local autonomy, as well as factors that may cut in the other direction, such as concerns about efficiency, expertise, and metropolitan fragmentation, we can develop a set of normative criteria by which to judge the part-time model. If we want to prioritize efficiency and expertise, and to provide a check against metropolitan fragmentation and electoral disinterest, then a part-time city council would seem to be a rational institutional design choice: the fact that power may be unexercised by a part-time council or redistributed to other institutional actors who better serve these values is a

<sup>11</sup> Power in this sense means something different than formal legal authority. *See infra* Part II.A.

<sup>12</sup> *See infra* Part II.A.

<sup>13</sup> *See infra* Part II.B.

normatively desirable outcome. Conversely, if we are more concerned with local decision-making reflecting values of democratic accountability, representing a diversity of interests, and enhancing local autonomy, then a part-time city council is more problematic, since it may result in a power vacuum and redistribution of power away from the very institution that can effectuate those values.

While a core concern of local government law is the distribution of power—between cities and states, among local governments, and between local governments and private interests<sup>14</sup>—and the public administration literature on the internal structures of local governments is voluminous,<sup>15</sup> scholars have given less attention to how these two doctrinal domains interact. This Article aims to fill this gap in the literature by providing both a comprehensive, descriptive account of how part-time city councils can create power vacuums and redistribute power, as well as advancing a set of normative claims about how to respond to these power dynamics. In doing so, the Article makes a novel contribution to the growing body of legal scholarship that grapples in important ways with how internal structures of local government shape legal and policy outcomes.<sup>16</sup>

<sup>14</sup>The literature on these issues is vast. Two of the foundational pieces of literature examining local government power are Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 8 (1990), and Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1105–09 (1980).

<sup>15</sup>See generally FREDERICKSON ET AL., *supra* note 2; MORE THAN MAYOR OR MANAGER: CAMPAIGNS TO CHANGE FORM OF GOVERNMENT IN AMERICA’S LARGEST CITIES (James H. Svara & Douglas J. Watson eds., 2010) [hereinafter MORE THAN MAYOR OR MANAGER] (presenting a series of case studies about cities that have recently enacted charter changes to their form of government); JAMES H. SVARA, NAT’L LEAGUE OF CITIES, TWO DECADES OF CONTINUITY AND CHANGE IN AMERICAN CITY COUNCILS (Sept. 2003), <https://wanty.com/wp-content/uploads/2018/01/NLC-City-Councils.pdf> [<https://perma.cc/B7T3-XARZ>] [hereinafter SVARA, TWO DECADES]; Susan MacManus, *The Resurgent City Councils*, in AMERICAN STATE AND LOCAL POLITICS: DIRECTIONS FOR THE 21ST CENTURY 166 (Ronald Weber & Paul Brace eds., 1999) (providing a taxonomy of structures and operations of city councils); Kimberly L. Nelson & James H. Svara, *Form of Government Still Matters: Fostering Innovation in U.S. Municipal Governments*, 42 AM. REV. PUB. ADMIN. 257 (2012) (analyzing what effect the choice of a mayor-council or council-manager form of local government has on innovation).

<sup>16</sup>See generally Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564 (2016); Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363 (2013); Clayton P. Gillette, *Expropriation and Institutional Design in State and Local Government Law*, 80 VA. L. REV. 625, 628 (1994); Noah M. Kazis, *American Unicameralism: The Structure of Local Legislatures*, 69 HASTINGS L.J. 1147 (2018); Ethan J. Leib, *Local Judges and Local Government*, 18 N.Y.U. J. LEGIS. & PUB. POL’Y 707, 711 (2015); Daniel B. Rodriguez, *Localism and Lawmaking*, 32 RUTGERS L.J. 627 (2001); David Schleicher, *I Would, but I Need the Eggs: Why Neither Exit nor Voice Substantially Limits Big City Corruption*, 42 LOY. U. CHI. L.J. 277 (2011); Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542 (2006) [hereinafter Schragger, *Strong Mayors*]; Zale, *supra* note 5.

This Article's focus on the power dynamics of the part-time model is also valuable because it moves the debate away from the often-ideological rhetoric over citizen legislators versus professional politicians to the more pragmatic context of distribution of power in governance systems. When the debate over part-time government is viewed through the former lens, as it so often is,<sup>17</sup> the focus is often on individuals, not institutions.<sup>18</sup> While there will certainly still be differences of opinion about how much power institutions should have vis-à-vis each other, evaluating the part-time model through the lens of institutional power not only provides a more doctrinally sound foundation for policy debates among scholars, but may also foster more civically productive dialogues among community members and their elected officials.

A few preliminary remarks about the scope of this project are warranted. First, a baseline assumption of this Article is that city councils, as the policymaking bodies for cities, have power that can be exercised in ways that matter. Although various background principles of state law, such as narrow conceptions of home rule authority, state preemption doctrines, and tax and expenditure limitations directly or indirectly limit the legal authority of cities, city councils still have extensive regulatory and policymaking authority over issues that matter, from infrastructure to economic development to social welfare.<sup>19</sup>

Relatedly, it might be asked why focus on part-time city councils, when there are other sites of governance, from state legislatures to county commissions to mayors and judicial officers, whose part-time statuses also implicate institutional power dynamics. In part, this Article's focus on city councils responds to a gap in the literature. Although a nascent resurgence of scholarship in local government law provides valuable insights into the local

<sup>17</sup> See, e.g., Terrence T. McDonald, *\$40K Pay Raise for Jersey City Council Members? Councilman Suggests Doubling Salaries*, JERSEY J. (Apr. 16, 2014), [https://www.nj.com/hudson/index.ssf/2014/04/jersey\\_city\\_councilman\\_suggests\\_100\\_salary\\_increase\\_for\\_council\\_members.html](https://www.nj.com/hudson/index.ssf/2014/04/jersey_city_councilman_suggests_100_salary_increase_for_council_members.html) [<https://perma.cc/CK76-39E2>]; Taylor Stevens, *Salt Lake City Council Considers Changes to Its Own Pay for the First Time in Nearly Four Decades*, SALT LAKE TRIB. (Nov. 27, 2018), <https://www.sltrib.com/news/politics/2018/11/28/salt-lake-city-council/> [<https://perma.cc/7Z6C-NWFF>]; Samantha Ye, *Petitioners Aiming to Get City Council Full-Time Pay*, ROCKY MOUNTAIN COLLEGIAN (Oct. 24, 2018), <https://collegian.com/2018/10/petitioners-aiming-to-get-city-council-full-time-pay/> [<https://perma.cc/5VN8-ZTX7>].

<sup>18</sup> See Johnny Kauffman, *Low Pay in State Legislatures Means Some Can't Afford the Job*, NPR (Jan. 9, 2017), <https://www.npr.org/2017/01/09/508237086/low-pay-in-state-legislatures-means-some-cant-afford-the-job> [<https://perma.cc/K8A3-DXN9>] (quoting Neil Malhotra, professor of political science at Stanford University) ("There's very, very few working class people in legislatures. This might have something to do with why a lot of legislation does not seem very friendly towards working class people.").

<sup>19</sup> See *infra* Part II.A.

executive,<sup>20</sup> local administrative agencies,<sup>21</sup> and local judicial officials<sup>22</sup> (and there is a significant body of legal and political science scholarship on state legislatures, some of which grapples with the part-time nature of those institutions),<sup>23</sup> city councils remain a particularly understudied institutional actor.

Furthermore, focusing on the implications of the part-time model in the context of city councils offers a relatively standardized measure of comparison. A significant percentage of U.S. cities do not have an independently elected executive,<sup>24</sup> but almost ninety percent have democratically elected city councils, which have broad governing authority and a set of foundational, baseline responsibilities that are fairly standardized across cities, such as budgeting, overseeing public employees, and responding to infrastructure needs.<sup>25</sup> And while there is significant variation in the full-time versus part-time status of county commissions, both across states and within individual states, as noted at the outset, the vast majority of cities in the United States utilize part-time city councils.<sup>26</sup>

Finally, in focusing on the connection between institutional design and city power, I am mindful that numerous other factors determine the power of city councils, from differences in the scope of home rule authority to the fiscal health of a city to the individual personalities of council members,<sup>27</sup> and that city

<sup>20</sup> See generally Jeffrey R. Henig, *Mayoral Control: What We Can and Cannot Learn from Other Cities*, in WHEN MAYORS TAKE CHARGE 19, 20 (Joseph P. Viteritti ed., 2009); William DeSoto et al., *Power, Professionalism, and Independence: Changes in the Office of the Mayor*, 38 ST. & LOC. GOV'T REV. 156, 156–64 (2006); Elisabeth R. Gerber & Daniel J. Hopkins, *When Mayors Matter: Estimating the Impact of Mayoral Partisanship on City Policy*, 55 AM. J. POL. SCI. 326, 326–39 (2011); Schragger, *Strong Mayors*, *supra* note 16.

<sup>21</sup> See Davidson, *supra* note 16, at 569–70.

<sup>22</sup> See, e.g., Roger A. Fairfax, Jr., *Delegation of the Criminal Prosecution Function to Private Actors*, 43 U.C. DAVIS L. REV. 411, 419 (2009); Leib, *supra* note 16, at 713; Richard H. Underwood, *Part-Time Prosecutors and Conflicts of Interest: A Survey and Some Proposals*, 81 KY. L.J. 1, 5–7 (1992).

<sup>23</sup> A majority of state legislatures are considered part-time. See *Full- and Part-Time Legislatures*, NAT'L CONF. ST. LEGISLATURES (June 14, 2017), <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx> [<https://perma.cc/N8P2-2NZQ>] (indicating that ten states have full-time state legislatures; twenty-six states have hybrid state legislatures (defined as two-thirds of a full-time job); and fourteen states have part-time state legislatures (defined as one-half of a full-time job)).

<sup>24</sup> See *infra* note 51 (discussing the council-manager form of government).

<sup>25</sup> See *Forms of Municipal Government*, NAT'L LEAGUE CITIES, <https://www.nlc.org/forms-of-municipal-government> [<https://perma.cc/9QXF-NJLY>].

<sup>26</sup> See *infra* Part II.A.2.

<sup>27</sup> See DOUGLAS YATES, *THE UNGOVERNABLE CITY: THE POLITICS OF URBAN PROBLEMS AND POLICY MAKING* 10 (1977) (“[T]o say that *x* holds *y* amount of power is not to give an adequate account of how he uses or fails to use that power to influence or control a particular decision.”); see also James H. Svara, *The Embattled Mayors and Local Executives*, in *AMERICAN STATE AND LOCAL POLITICS: DIRECTIONS FOR THE 21ST CENTURY* 139, 140 (Ronald E. Weber & Paul Brace eds., 1999) (noting that constraints on local officials include “the weakness of cities in the federal system, disparity of resources in



councils are but one part of any calculus regarding city power.<sup>28</sup> But this makes it even more important to understand how different factors impact city power. Analyzing how the internal structures of local government institutions affect power relationships not only contributes to a more analytically complete understanding of local governments, but can also help us adopt substantive policies that align with the capacities of our institutions—or change those institutions so that they have the necessary capacity to effectuate substantive policies.<sup>29</sup> Especially as cities increasingly become sites of policy innovations and act as “laboratories of democracy” with regard to issues ranging from campaign finance to public health to environmental protection, it is important to examine the structural dynamics that operate on the institutions that enact these policies.

This Article proceeds in five Parts. Part II provides an overview of part-time city councils, beginning with a primer on the positive features of city councils as an institution and their roles in local governance. This Part then turns to unpacking what is meant by the label “part-time” as applied to city councils and analyzing why the part-time model is such a prevalent one in cities. Part III first develops a descriptive framework of the power dynamics of the part-time model, beginning with an analysis of the tradeoffs the part-time model makes in terms of legislative capacity, institutional resources, and political capital, and then develops a taxonomy of how the diminished power of part-time city councils can produce power vacuums and redistribute power to other institutions. Part IV explores the normative implications of these power dynamics. A brief conclusion follows in Part V.

## II. CITY COUNCILS AND THE PART-TIME MODEL

Part II.A begins with a descriptive account of city councils, highlighting their organizational features and role in local governance. Part II.B turns to unpacking the meanings of “part-time” versus “full-time,” and analyzing why

metropolitan areas, restricted resources, and rampant pluralism in the local political process”) [hereinafter Svara, *Embattled Mayors*].

<sup>28</sup> See B. GUY PETERS, *INSTITUTIONAL THEORY IN POLITICAL SCIENCE: THE NEW INSTITUTIONALISM* 184 (3rd ed. 2012) (“[I]nstitutions are the variables that explain political life in the most direct and parsimonious manner, and they are also the factors that themselves require explanation.”); Ronald D. Hedlund, *Organizational Attributes of Legislatures: Structure, Rules, Norms, Resources*, 9 LEGIS. STUD. Q. 51, 87 (1984) (“[O]rganizational characteristics are important features of a legislature because they define the situation in which legislative activity takes place, structure legislative behavior and activity, and establish the ways in which legislatures operate. . . . The impact of such organizational factors has been seen in both direct and indirect ways . . .”).

<sup>29</sup> See Vivien Lowndes, *New Institutionalism and Urban Politics*, in THEORIES OF URBAN POLITICS 91, 92 (Jonathan S. Davies & David L. Imbroscio eds., 2009) (discussing the “new institutionalism” school of political science, which “does not take political institutions at face value [and] instead . . . takes a critical look at the way in which they embody values and power relationships”).

the part-time model is such a prevalent institutional design choice for city councils.

#### A. A Primer on City Councils

*Types of Local Governments.* At the broadest level, local governments fall into two categories: general purpose governments and special purpose governments.<sup>30</sup> The former consists of cities and counties,<sup>31</sup> while the latter covers a vast range of entities, ranging from school districts to river authorities to hospital management districts.<sup>32</sup> The two main types of general purpose local governments, cities and counties, are formally distinguished by the incorporated status of the former and the unincorporated status of the latter.<sup>33</sup> Formally referred to as “municipal corporations,” cities are created by an act of incorporation initiated by residents.<sup>34</sup> Counties are directly created by the state as administrative units.<sup>35</sup>

<sup>30</sup> See *Definitions: Local General Purpose Governments*, U.S. CENSUS BUREAU, [https://www.census.gov/newsroom/cspan/govts/20120301\\_cspan\\_govts\\_def\\_3.pdf](https://www.census.gov/newsroom/cspan/govts/20120301_cspan_govts_def_3.pdf) [<https://perma.cc/QA6X-RSFS>]; *Definitions: Local Special Purpose Governments*, U.S. CENSUS BUREAU, [https://www.census.gov/newsroom/cspan/govts/20120301\\_cspan\\_govts\\_def\\_4.pdf](https://www.census.gov/newsroom/cspan/govts/20120301_cspan_govts_def_4.pdf) [<https://perma.cc/VPS4-3L2V>].

<sup>31</sup> See *Definitions: Local General Purpose Governments*, *supra* note 30. Other general purpose local governments include towns, townships, boroughs, and parishes; these forms of government are only found in some states. *Id.*

<sup>32</sup> *Cities 101—Types of Local Government*, NAT’L LEAGUE CITIES, <https://www.nlc.org/resource/cities-101-types-of-local-governments> [<https://perma.cc/2GQS-8ND7>]; see 1 EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 2:4 (3d ed., rev. 2019).

<sup>33</sup> MCQUILLIN, *supra* note 32, § 2:07:10.

<sup>34</sup> *Id.* In addition to cities, the U.S. Census includes villages, boroughs (except in New York and Alaska), and towns (except in New England and the upper Midwest) as types of municipal corporations in the total count of incorporated places. DARRYL T. COHEN ET AL., U.S. CENSUS BUREAU, *POPULATION TRENDS IN INCORPORATED PLACES: 2000 TO 2013*, at 5–6, 13 (Mar. 2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1142.pdf> [<https://perma.cc/G3S4-M6RF>]. For purposes of brevity, this Article uses the generic term “city” to refer to all types of municipal corporations.

<sup>35</sup> Counties are considered to be more direct agents and political subdivisions of the state and thus are more constrained in both their legal powers and their institutional design arrangements than cities. See, e.g., *Curtis v. Eide*, 244 N.Y.S. 2d 330, 332 (N.Y. App. Div. 1963) (“[C]ounties are involuntary subdivisions of the state created for the most part for convenience and for more expeditious state administration.”). However, some states have granted home rule powers to counties somewhat analogous to those granted to cities, and some counties have embarked on innovative policymaking outside the scope of their traditional duties. See Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 994 (2010). In some ways, counties are more complicated institutional entities than incorporated municipalities and are worthy of further study. See *id.* (“[W]e know very little about the political economy of county government. . . . [C]ounty governments wear several distinct hats. They serve as the only general purpose local government for unincorporated areas, the second level of general purpose local government for incorporated

There are over 19,000 municipal corporations in the United States, the majority of which are small places with fewer than 5000 residents.<sup>36</sup> Thus, despite the common connotation of a city as a dense, highly populated, urban place, most places with the legal designation of a city look more like what most people would refer to as a suburb or small town. However, even though most cities are small cities, the majority of the U.S. population lives in larger cities: 75% of Americans live in cities of 10,000 or more residents,<sup>37</sup> and roughly 60% of Americans in incorporated places live in cities with more than 50,000 residents.<sup>38</sup>

*The State-Local Relationship.* All local governments, whether counties, cities, or special purpose districts, are considered creatures of the state.<sup>39</sup> There is no equivalent to the Tenth Amendment for local governments: local governments are considered political subdivisions of the state, and the state has broad power to shape, control, and even eliminate them.<sup>40</sup> This top-down view of local government has meant that local power has traditionally been viewed narrowly: unless explicitly authorized by the state, local governments have been presumed not to have the power to act.<sup>41</sup>

However, the value of local autonomy has long been recognized, and most states grant significant autonomy to local governments, both through specific grants of power to local governments and through the broader principle of home rule. Home rule refers to local self-government that results from the delegation of power from the state to local governments to regulate municipal affairs without requiring a specific grant of authority from the state for each act of local regulation.<sup>42</sup> Home rule is not automatic: if state law provides for home rule, for a city to take advantage of it, that city typically must meet a minimum

areas, administrative subdivisions of state government, and bureaucratic units for the delivery of federal services.”).

<sup>36</sup> U.S. CENSUS BUREAU, 2012 CENSUS OF GOVERNMENTS—ORGANIZATION (Sept. 2013), <https://www.census.gov/data/tables/2012/econ/gus/2012-governments.html> (click on Table 7: Subcounty General-Purpose Governments by Population-Size Group and State: 2012) [on file with *Ohio State Law Journal*].

<sup>37</sup> FREDERICKSON ET AL., *supra* note 2, at 3.

<sup>38</sup> See COHEN ET AL., *supra* note 34, at 3.

<sup>39</sup> See *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907) (“Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.”).

<sup>40</sup> *Id.* at 178–79.

<sup>41</sup> This view of limited local autonomy is also reflected in Dillon’s Rule, which provides that municipal corporations possess and can exercise only the following powers: those expressly granted, those necessarily implied by the powers expressly granted, and those essential to accomplish the purposes of the corporations. See RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 327 (8th ed. 2016). Under Dillon’s Rule, doubts about existence of power are resolved against the municipality. See *id.*

<sup>42</sup> *Id.* at 330.

population requirement as well as adopt a city charter through a majority vote of its residents.<sup>43</sup>

The parameters of home rule vary, depending both on the type of home rule authority granted under state law and on how courts interpret the scope of the authority. Under legislative home rule, local governments are delegated broad authority to act unless the state specifically prohibits local action.<sup>44</sup> While local governments have a broad presumption of autonomy under this type of home rule, the state can choose to preempt local action on any matter.<sup>45</sup> In these states, the legal question in home rule cases is typically whether the state has implicitly preempted local action.<sup>46</sup>

Another type of home rule is known as imperio home rule. In an imperio home rule system, local governments retain the authority to act on “municipal affairs” only.<sup>47</sup> As a result, cities in imperio home rule states have authority over a narrower range of affairs than cities in legislative home rule states.<sup>48</sup> However, if a matter is determined to be exclusively municipal in an imperio home rule state, then the normal rules of preemption are inverted: the local government action cannot be preempted by conflicting state law.<sup>49</sup> In these states, the legal question in home rule cases typically centers on is the definition of “local”: some imperio home rule states interpret local affairs very broadly, while others construe it more narrowly, such that local governments are left with only a narrow area in which to legislate.<sup>50</sup>

*Structures of City Government.* In addition to being distinguished by whether they have home rule authority, cities also differ in their internal organizational structures. Forms of local government vary both in how power is distributed internally between elected and appointed officials, as well as in how power is distributed among elected officials. The vast majority of cities use one of two organizational structures: the mayor-council system or the council-manager system.<sup>51</sup>

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., WENDY H. GRIDLEY, OHIO LEGISLATIVE SERV. COMM’N STAFF, MUNICIPAL HOME RULE (Jan. 2010), <https://www.lsc.ohio.gov/documents/reference/current/membersomemberson/128municipalhomerule.pdf> [https://perma.cc/Z4PB-V88K] (discussing home rule).

<sup>45</sup> See BRIFFAULT & REYNOLDS, *supra* note 41, at 348.

<sup>46</sup> See Lauren E. Phillips, Note, *Impeding Innovation: State Preemption of Progressive Local Regulations*, 117 COLUM. L. REV. 2225, 2234–35 (2017) (discussing implied preemption).

<sup>47</sup> See *St. Louis v. W. Union Tel. Co.*, 149 U.S. 465, 467–68 (1893) (establishing the concept of imperio home rule).

<sup>48</sup> See BRIFFAULT & REYNOLDS, *supra* note 41, at 347.

<sup>49</sup> See *id.* at 348.

<sup>50</sup> *Id.* at 350.

<sup>51</sup> See DeSoto et al., *supra* note 20, at 158 (“Ninety-two percent of municipal governments in the United States today have one of [these] two forms of governments . . . .”); Nelson & Svava, *supra* note 15, at 259. Other forms of government that are more infrequently used are the commission form, town meeting, and representative town

In the mayor-council form of government, used in approximately one-third of all cities,<sup>52</sup> there is a separation of powers between the city council, which has legislative authority, and the mayor, who is separately elected and vested with executive and administrative powers.<sup>53</sup> The council-manager system, in contrast, vests all governmental authority—legislative, executive, and administrative—in the city council.<sup>54</sup> The council in this system delegates its administrative authority to an appointed city manager who is tasked with the day-to-day administration of city government and implementation of policies enacted by the council.<sup>55</sup>

Council-manager systems emerged as part of the early twentieth century Progressive reform movement, in an attempt to depoliticize local government and professionalize public administration.<sup>56</sup> Because the council-manager

meeting. *See Forms of Municipal Government*, *supra* note 25 (describing these forms of government). In a commission form of government, the city is governed by an elected commission, which holds all legislative and executive authority and has no elected executive or appointed professional manager. *Id.* Each member of the commission is responsible for a specific aspect of city governance (such as fire, police, or public works). *Id.* In a town meeting form of government, all eligible voters make decisions about policy directly, and in a representative town meeting form of government, residents elect a large number of their fellow residents to serve as selectmen who vote at town meetings. *Id.* Although the council-manager and mayor-councils are distinguished formally as described herein, some public administration scholars have suggested that, in practice, many cities use elements of both systems, such as mayor-council cities that appoint chief administrative officers who serve in a role much like a city manager. *See, e.g.,* FREDERICKSON ET AL., *supra* note 2, at 18 (analyzing the changes in forms of municipal governments and suggesting that fewer cities fit the traditional mold of council-manager or mayor-council and “[m]ost American cities are now best described as adapted”); DeSoto et al., *supra* note 20, at 158 (summarizing recent research suggesting the “traditionally clear distinction between mayor-council and council-manager systems is eroding”).

<sup>52</sup> The mayor-council system is used most frequently in small cities and large cities, and less frequently in mid-sized cities, which tend to use the council-manager system. *See MORE THAN MAYOR OR MANAGER*, *supra* note 15, at 8–10 (providing tables showing the distribution of governmental forms across municipalities of various populations).

<sup>53</sup> *See id.* at 7–8 (“In contrast to the council-manager form in which the council has authority over the manager, the mayor in the mayor-council form is a separate and independent executive.”).

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.* at 7; *see also* LEAGUE OF ARIZ. CITIES & TOWNS, WHAT ALL NEWLY-ELECTED LOCAL OFFICIALS NEED TO KNOW 34 (June 2018), <https://www.azleague.org/ArchiveCenter/ViewFile/Item/185> [<https://perma.cc/R583-Z4GQ>] (describing the role of the city manager in a council-manager system: “The manager is generally given the power to appoint and remove all employees, to draft the annual budget for submission to the council, to supervise and coordinate the day-to-day operations of the various departments and to present policy alternatives to the council.”).

<sup>56</sup> Another legacy of the progressive reform movement in cities is non-partisan elections; in both council-manager and mayor-council forms of government, elections often are non-partisan: almost seventy percent of cities have non-partisan elections. *See Elmendorf & Schleicher*, *supra* note 16, at 385 (discussing problematic aspects of non-partisan elections).

system is intentionally designed to remove politics from governance, it trades accountability for efficiency: decisions about policy implementation are made by a professional city manager, who may bring efficiency to that decision-making process but who is not directly accountable to voters.<sup>57</sup>

In cities with mayors, the mayor may be characterized as either the strong mayor or weak mayor variety. These labels are not judgments about mayoral effectiveness but simply refer to the level of “political power and administrative authority” the mayor has been granted pursuant to the city charter.<sup>58</sup> Strong mayors tend to be associated with the mayor-council form of city government and weak mayors with the council-manager form, but there is no necessary correlation.<sup>59</sup> In a strong mayor system, the mayor is an independently elected official who typically has authority to supervise city agencies and oversee personnel, as well as a significant amount of discretion over budgetary decisions and veto power over council legislation.<sup>60</sup> In cities with a strong mayor, separation of powers most closely mirrors that of federal or state government:<sup>61</sup> while the city council may disagree with how the mayor is administering (or failing to administer) policies enacted by the council, council has limited authority to interfere with the mayor’s decisions over personnel or the day-to-day administration of city departments.<sup>62</sup>

In the weak mayor system, the mayor may be independently elected or may be chosen from among city council members and largely serves a ceremonial role as the head of the city.<sup>63</sup> The mayor may have full voting rights on city council or may only have power to break a tie;<sup>64</sup> and the council, not the mayor, appoints department heads and has primary control over the city budget.<sup>65</sup>

<sup>57</sup> See Alan Ehrenhalt, *The Mayor-Manager Conundrum*, GOVERNING STATES & LOCALITIES (Oct. 2004), <http://www.governing.com/topics/mgmt/Mayor-Manager-Conundrum.html> [<https://perma.cc/YXL2-GR3Q>] (pointing out the challenges a city faces in trying to design a system that promotes efficiency and accountability equally: “It can hire a manager to replace wasteful political patronage with non-partisan administration, but in doing that it gives up the benefits of having highly visible political leadership. Or it can choose a strong mayor, and get the leader it is looking for. But as often as not, that brings in an element of managerial cronyism and politically tainted policy decisions.”).

<sup>58</sup> *Mayoral Powers*, NAT’L LEAGUE CITIES, <https://www.nlc.org/mayoral-powers> [<https://perma.cc/5EBP-8L9J>].

<sup>59</sup> COLO. MUN. LEAGUE, COLORADO MUNICIPAL GOVERNMENT: AN INTRODUCTION 12 (2013), <https://www.cml.org/issues/government/municipal/.../forms-of-municipal-government/> [<https://perma.cc/P4VP-EJUC>] (noting some council-manager cities severely limit the position of mayor).

<sup>60</sup> *Mayoral Powers*, *supra* note 58.

<sup>61</sup> See *id.*

<sup>62</sup> *Id.*

<sup>63</sup> See *Forms of Municipal Government*, *supra* note 25.

<sup>64</sup> See, e.g., *Functions of City Council*, CITY OF CENTER, TEX., <https://www.center.texas.org/city-council/functions-city-council> [<https://perma.cc/6MHL-CY4A>] (“The mayor is recognized as the head of the city government for ceremonial and emergency purposes but is not a voting member of the Council except to break a tie.”).

<sup>65</sup> See COLO. MUN. LEAGUE, *supra* note 59, at 13.

Furthermore, in a weak mayor system, which is often correlated with a council-manager system, there is no traditional separation of powers: the mayor typically has minimal executive powers and may simply share legislative power with the council (if she is a voting member).<sup>66</sup> And while the council delegates administrative authority to the city manager, the city council retains the ability to overrule that authority, and thus may be potentially more involved in the day-to-day administration than would be permitted in a mayor-council system.<sup>67</sup>

*Role of City Councils.* As noted above, unlike at the state and federal levels of government, there is no constitutionally mandated separation of powers at the local level: city councils perform both legislative and non-legislative functions.<sup>68</sup> For example, city councils in both council-manager and mayor-council forms of government commonly act as quasi-judicial decision-making bodies on land use matters, such as rezonings, special use permits, and subdivision applications.<sup>69</sup>

As the elected legislative body of cities, city councils have primary responsibility for setting city policy through the enactment of local legislation.<sup>70</sup> Traditionally, this has meant enacting laws related to the allocation of public

<sup>66</sup> See *Forms of Municipal Government*, *supra* note 25.

<sup>67</sup> See COLO. MUN. LEAGUE, *supra* note 59, at 13.

<sup>68</sup> The structure of council-manager cities underscores this point: as noted above, in such cities, all governmental power is held by the city council. See 1 JOHN MARTINEZ, LOCAL GOVERNMENT LAW § 9:7 (West 2017) (noting that under its plenary legislative authority, state legislatures may, but need not, create separate branches of local government by statute). The exact contours of separation of powers at the local level vary from state to state. See *Zale*, *supra* note 5, at 852–53 (discussing how states vary in their approach to separation of powers at the local level).

<sup>69</sup> See *Zale*, *supra* note 5, at 852–53.

<sup>70</sup> See, e.g., *City Council*, CITY OF LEXINGTON, VA., [http://lexingtonva.gov/gov/city\\_council.htm](http://lexingtonva.gov/gov/city_council.htm) [<https://perma.cc/GUV9-TKJV>] (“The City Council is the legislative and policy-making body of the city.”); COLO. SPRINGS, COLO., CHARTER art. III, § 3–10(a)–(b) (2010), <http://d3n8a8pro7vhmx.cloudfront.net/coloradospringsforward/mailings/57/attachments/original/CityOfColoradoSpringsCharter.pdf?1417735165> [<https://perma.cc/4N32-UVUK>] (“All legislative powers of the City shall be vested in the Council, except as otherwise provided by law or this Charter. . . . Except as otherwise set forth herein, whenever an executive or administrative function or duty shall be required to be performed by ordinance, the same shall be performed by the executive branch and not by the legislative branch.”). Although policymaking authority is vested in city councils, and the local executive (the mayor in a mayor-council system or the city manager in a council-manager system) is tasked with implementing policies, the line between policymaking and administration can be porous. See, e.g., *Roles and Responsibilities of Local Government Leaders*, MUN. RES. SERVS. CTR., <http://mrsc.org/Home/Explore-Topics/Governance/Offices-and-Officers/Roles-and-Responsibilities.aspx> [<https://perma.cc/3MBU-NUZN>] (“Mayors, county executives, city managers, and staff do not make policy decisions. However, they have strong influence on the policy-making process and its resultant decisions. For example, they propose budgets, oversee staff-led studies and analyses related to proposed policies, and make policy recommendations to councils.”).

goods, such as education, land use, and infrastructure.<sup>71</sup> But city councils, particularly in home rule cities, have broad authority to enact a wide range of public health, safety, and welfare measures.<sup>72</sup> In response to the needs and demands of residents—and in response to inaction by state and federal lawmakers—councils in cities large and small have enacted policies on a wide range of issues that go beyond the traditional municipal focus on roads and schools, and encompass issues ranging from environmental regulation to consumer protection to election law reforms.<sup>73</sup>

In addition to setting policy—which council accomplishes not only by passing ordinances but also through a range of other policy-related actions, such as adopting the annual budget (which sets fiscal priorities), making decisions about city contracting and entering into intergovernmental agreements, and appointing members of administrative commissions—city councils also perform other duties. Some of these responsibilities are mandated by state or federal law, such as ensuring the city’s compliance with election rules.<sup>74</sup> Other duties are political, rather than legal: for example, a significant part of a council member’s role is providing constituent services.<sup>75</sup> Constituent services refer to the expectation that council members or their staff will be available to address the individualized needs and concerns of constituents, with respect to everything from responding to complaints about trash pickup times to assisting residents with permit applications.<sup>76</sup> Empirical surveys indicate that constituent services are a significant and time-consuming part of a council member’s job, occupying as much as one-third to one-half of the total time members spend on council-related work.<sup>77</sup>

<sup>71</sup> See KAREN M. KAUFMANN, *THE URBAN VOTER* 19 (2004) (describing the decisions of local lawmakers as primarily allocational in nature: “who will receive how much and at the expense of whom”).

<sup>72</sup> See *infra* Part II.B.2 (discussing home rule cities’ broad powers).

<sup>73</sup> See Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1165 (2018) [hereinafter Schragger, *American Cities*] (discussing policymaking by local governments that has sparked preemptive responses from state governments).

<sup>74</sup> See, e.g., *Elections*, CITY OF WATAUGA, TEX., <https://www.cowtx.org/826/Elections> [<https://perma.cc/B5DF-PFXK>] (“The City of Watauga is a Home Rule municipal government and operates under a Council-Manager form of government. . . . City elections are conducted in accordance with the Texas Election Code . . . each year.”).

<sup>75</sup> See *United States v. Brewster*, 408 U.S. 501, 512 (1972) (stating that constituent services “are performed in part because they have come to be expected by constituents, and because they are a means of developing continuing support for future elections. Although these are entirely legitimate activities, they are political in nature rather than legislative . . .”).

<sup>76</sup> See Joshua Bone, *Stop Ignoring Pork and Potholes: Election Law and Constituent Service*, 123 YALE L.J. 1406, 1411 (2014) (“The term ‘constituent service’ involves a set of relationships between individuals and their representatives that are often personal, idiosyncratic, and hidden from public view.”).

<sup>77</sup> See SVARA, *TWO DECADES*, *supra* note 15, at 11–12 (presenting survey results on how much time council members reported spending on constituent services in proportion to overall time spent on council-related activities and noting that constituent services take up



To provide a more complete picture of the legal powers and duties of city councils, Table 1 below provides an overview of the various functions performed by city councils, as well as the role (if any) of other institutional actors with regard to specific functions. How much of the council's overall agenda each of these functions occupies necessarily varies by city, depending not only on the scope of the city's legal authority (in particular, whether it is a home rule city), but also on the size of the city, the staff support, the level of involvement of the mayor and other government officials, as well as idiosyncratic differences among council members. However, the first three functions listed in Table 1—adoption of an annual budget, enacting ordinances, and constituent services—are the core functions of any local legislature.

It is also important to recognize that some functions described below have additional layers of granularity not captured in this tabular summary. For example, the category of “enacting local ordinances” includes a vast range of possibilities. Many local ordinances can be described as “nuts and bolts” ordinances which simply keep the city operational, such as ordinances setting fees for use of city recreational facilities, establishing rules for city procurement processes, clarifying vesting requirements for public employee pension benefits, or updating address numbering for the street grid. Other local ordinances look more like administrative decisions and may affect only a few individuals or even just a single resident or property owner; this is particularly true in the land use context, such as with rezoning decisions.<sup>78</sup> Other ordinances may have broader ramifications, not only for the city adopting them, but also in terms of shaping the public policy debate in other cities, as well as at the state and federal levels, such as the adoption of anti-smoking ordinances in cities in the 1990s,<sup>79</sup> or the living wage ordinances being adopted in cities today.<sup>80</sup>

While acknowledging that there is more complexity to city council powers than can be captured in a tabular summary, the following table nonetheless offers a snapshot of the typical responsibilities of city councils, as well as a comparative summary of other institutional actors with whom particular

“a larger share of the time spent on the job of council member in medium-sized and large cities” in particular).

<sup>78</sup> See Eve Byron, *Missoula Gives Initial Nod to Emergency Zoning for Some Townhome Projects*, MISSOULIAN (Apr. 24, 2019), [https://missoulain.com/news/local/missoula-gives-initial-nod-to-emergency-zoning-for-some-townhome/article\\_d5df3b95-11f0-5080-9871-eeefd4c6cf39.html](https://missoulain.com/news/local/missoula-gives-initial-nod-to-emergency-zoning-for-some-townhome/article_d5df3b95-11f0-5080-9871-eeefd4c6cf39.html) [https://perma.cc/ARE5-UEQ8] (discussing an instance of a land use ordinance targeted at a handful of property owners).

<sup>79</sup> See INST. OF MED., *SECONDHAND SMOKE EXPOSURE AND CARDIOVASCULAR EFFECTS: MAKING SENSE OF THE EVIDENCE* 113 (2010) (“[D]uring the 1990s state and local governments across the country enacted an increasing number of more restrictive bans, including bans on smoking in most workplaces in some states.”).

<sup>80</sup> *Inventory of US City and County Minimum Wage Ordinances*, UC BERKELEY LAB. CTR., <http://laborcenter.berkeley.edu/minimum-wage-living-wage-resources/inventory-of-us-city-and-county-minimum-wage-ordinances/> [https://perma.cc/PQ6S-LNGJ] (“Before 2012, only five localities had minimum wage laws; currently, 46 counties and cities do.”).

responsibilities may be shared or alternatively held by. I will return to this table in Part III, as it will be helpful in thinking through instances when the diminished power of a part-time city council might result in particular city council powers being unexercised versus being redistributed to other actors.

Table 1: *Powers and Duties of City Councils*

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
Adoption of annual budget <sup>81</sup>	In mayor-council cities, the mayor typically submits an initial budget draft and may have veto over the council vote. <sup>82</sup> In council-manager cities, the manager typically submits an initial budget draft. <sup>83</sup>
Enactment of local ordinances, resolutions, and/or motions in furtherance of public health, safety, welfare (i.e., legislative exercise of police powers) <sup>84</sup>	Ordinances may be proposed by the council itself, or by the mayor, city staff, residents, interest groups, etc. <sup>85</sup>
Constituent services <sup>86</sup>	Other elected executives (for example, mayors) are also typically expected to perform constituent services. <sup>87</sup>

<sup>81</sup> Adoption of an annual budget is often *the* major responsibility of a city council: in developing and adopting an annual budget, the city council makes a wide range of policy decisions, such as determining which city-provided services will be maintained, increased, diminished, or eliminated; how much funding various city departments and the public employees working in them will receive; and setting the rates for sales, property, and other taxes (if authorized under state law). *See* COLO. MUN. LEAGUE, *supra* note 59, at 41.

<sup>82</sup> *See* COMM. OF SEVENTY, HOW CITY COUNCIL WORKS 15–16 (Jan. 2015), <https://seventy.org/uploads/files/84252017213333599-how-city-council-works-guide.pdf> [<https://perma.cc/FF4M-2NVX>].

<sup>83</sup> *See* COLO. MUN. LEAGUE, *supra* note 59, at 11.

<sup>84</sup> The scope of local legislative authority to enact ordinances varies, depending on whether the city has home rule authority or not. In home rule cities (sometimes referred to as charter cities), local legislative authority is generally fairly broad, subject only to the limitations of the state's home rule; in non-home rule cities (sometimes referred to as non-charter cities) where Dillon's Rule applies, local legislative authority is typically limited to only those powers that have been specifically authorized by the state. *See* BRIFFAULT & REYNOLDS, *supra* note 41, at 327.

<sup>85</sup> *See, e.g., Functions of City Council, supra* note 64.

<sup>86</sup> *City Councils*, NAT'L LEAGUE CITIES, <https://www.nlc.org/city-councils> [<https://perma.cc/6VCG-EM22>] (noting constituent services as one of several possible responsibilities of local government).

<sup>87</sup> *See, e.g., Rick Rojas, His Home Flooded, the Port Arthur Mayor Puts His City First*, N.Y. TIMES (Sept. 17, 2017), [https://www.nytimes.com/2017/09/17/us/harvey-port-arthur-mayor.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=0](https://www.nytimes.com/2017/09/17/us/harvey-port-arthur-mayor.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0) [<https://perma.cc/QR2H-NRSV>] In the weeks after Hurricane Harvey, the role of the Port Arthur, Texas mayor greatly expanded.

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
Appointment, termination, and general supervision of city manager <sup>88</sup>	While mayor-council cities typically do not have a city manager, some cities have adopted a hybrid form of government (mayor-council with a city manager, often called an administrator). In these cities, appointment and supervisory authority over the administrator may be shared between council and mayor. <sup>89</sup>
Decisions about land use, planning, and/or zoning <sup>90</sup>	Certain types of land use decisions (variances, conditional uses, subdivisions, etc.) may be delegated to administrative bodies, such as planning and zoning boards. Final decisions may or may not require city council approval. <sup>91</sup>
Holding of regular meetings and public hearings <sup>92</sup>	Not applicable.

Normally the job of mayor is part-time, requiring only one white button-down shirt embroidered with his name and the city logo. Lately, his mother has been washing that shirt every morning. Mr. Freeman has spent his days racing around the city, lobbying a visiting senator for federal aid one moment, sitting next to a woman sobbing onto his shoulder the next. He has focused on practical matters like restoring trash pickup, reopening schools and finding homes for displaced families.

*Id.*

<sup>88</sup> See, e.g., *City Manager*, CITY OF SARATOGA, CAL., <https://www.saratoga.ca.us/DocumentCenter/View/1381/City-Manager> [<https://perma.cc/GEP3-PCXA>] (explaining that the Saratoga City Council has the power to appoint, oversee, and remove city manager); *City Manager*, CITY OF BUDA, TEX., <https://www.ci.buda.tx.us/104/City-Manager> [<https://perma.cc/D2L6-BZGL>] (specifying that city manager is appointed by Buda City Council for an indefinite term and is removable by city council).

<sup>89</sup> See COLO. MUN. LEAGUE, *supra* note 59, at 10 (discussing this hybrid dynamic).

<sup>90</sup> As noted above, some land use decisions, such as rezonings, may be considered legislative actions and are enacted through the adoption of an ordinance (and thus technically are a sub-category of the broader “enactment of ordinances” category above). Other land use decisions, such as variances, are considered quasi-judicial or administrative actions. See 8A EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 25:249 (3d ed., rev. 2019).

<sup>91</sup> See, e.g., Maria Nagle, *Zoning Board Recommends Approval of Permit for New Tesla Bloomington Center*, PANTAGRAPH (July 17, 2019), [https://www.pantagraph.com/news/local/govt-and-politics/zoning-board-recommends-approval-of-permit-for-new-tesla-bloomington/article\\_8e6ca5b2-baae-5263-af9d-8d88be770c74.html](https://www.pantagraph.com/news/local/govt-and-politics/zoning-board-recommends-approval-of-permit-for-new-tesla-bloomington/article_8e6ca5b2-baae-5263-af9d-8d88be770c74.html) [<https://perma.cc/E4US-G2HK>] (discussing a city where even a unanimous vote by the zoning board requires council approval).

<sup>92</sup> See, e.g., COLO. SPRINGS, COLO., *supra* note 70, § 3–60(a)–(b) (“The Council shall meet at least once a month in legislative session, and the Council shall prescribe the time and place of its legislative sessions and the manner in which special meetings thereof may be called.”).

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
Approval of city contracting <sup>93</sup>	May be subject to review and/or approval by other governmental authorities or elected officials (for example, state or local auditors, subject-specific state agencies, labor relations boards, etc.). <sup>94</sup>
Authority over decisions regarding real and personal city property, including acquisition, disposition, and the exercise of eminent domain <sup>95</sup>	Not applicable.
Establishment of property tax rate and proprietary public utility rates <sup>96</sup>	State law may establish limitations on property tax rates; <sup>97</sup> state law or interlocal agreements may establish other requirements with regard to public utility rates. <sup>98</sup>
Issuance of municipal bonds <sup>99</sup>	State law or the city charter may require voter approval for the issuance of municipal bonds. <sup>100</sup>

<sup>93</sup> See, e.g., CRESTON, IOWA, CODE OF ORDINANCES § 17.02(5) (2006), <https://www.crestoniowa.gov/DocumentCenter/View/457/CHAPTER-17---COUNCIL> [<https://perma.cc/2DVV-7JFH>] (describing city council's contracting authority).

<sup>94</sup> See, e.g., Jay Kolls, *Lakeland Mayor Calls City Council 'Dysfunctional,' State Auditor Asked to Review City Finances*, KSTP 5 EYEWITNESS NEWS (Apr. 16, 2019), <https://kstp.com/news/lakeland-mayor-calls-city-council-dysfunctional-state-auditor-asked-to-review-city-finances/5319641/> [<https://perma.cc/GDT5-9J8X>] (concerning a city-wide petition asking the state auditor to audit the city's finances related to a contracting issue).

<sup>95</sup> See, e.g., *City Councils*, *supra* note 86.

<sup>96</sup> See, e.g., *Utilities*, CITY OF LIVINGSTON, TEX., <https://www.cityoflivingston-tx.com/154/Utilities> [<https://perma.cc/GE93-4JPW>] ("Rates for all [municipal utility] services are established by municipal ordinances which are adopted and approved by the City Council.").

<sup>97</sup> See, e.g., N.Y. ST. OFF. COMPTROLLER, UNDERSTANDING THE CONSTITUTIONAL TAX LIMIT 2, <https://www.osc.state.ny.us/localgov/finreporting/cities.pdf> [<https://perma.cc/3E2Y-C32X>] ("The New York State Constitution places a legal limit on the authority of cities, as well as counties and villages, to impose property taxes. Statutes intended to enforce these constitutional provisions require the Comptroller to withhold certain local assistance payments if taxes are levied in excess of a municipality's tax limit.").

<sup>98</sup> See, e.g., N.C. GEN. STAT. § 62-2 (West 2018) ("[A]uthority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations . . .").

<sup>99</sup> See, e.g., VT. STAT. ANN. tit. 24, § 59 (West 2019) (city council has the authority to issue and refund bonds).

<sup>100</sup> See, e.g., Kirk Pinho, *Birmingham Voters Overwhelmingly Reject \$57.4 Million Parking Deck Bond*, CRAIN'S DET. BUS. (Aug. 6, 2019), <https://www.craainsdetroit.com/real-estate/birmingham-voters-overwhelmingly-reject-574-million-parking-deck-bond> [<https://perma.cc/LL9U-VZZN>] (detailing voters' rejection of a proposed Birmingham bond measure); HOUSTON, TEX., CODE OF ORDINANCES art. IV, § 1 (1979), [https://library.municode.com/tx/houston/codes/code\\_of\\_ordinances?nodeId=CH\\_AR](https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=CH_AR)

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
Service on local, regional and/or inter-jurisdictional entities <sup>101</sup>	Not applicable.
Adoption of legislative agenda identifying policy goals and interests to be lobbied for at the state and/or federal level	May be formal or informal; often a cooperative effort with mayor; may involve cooperation with other local governments. <sup>102</sup>
Appointment and/or approval of appointments for designated city positions <sup>103</sup>	Council itself may appoint certain designated positions (typically high-level city employees, such as the city attorney or members of city boards and commissions), or it may confirm candidates for such positions appointed by the mayor or manager. <sup>104</sup>

TIVPOBOBUBASISTAGSTEQ [<https://perma.cc/G9YG-332U>] (“No bonds shall be issued for any purpose, except for the purpose of making permanent improvements, which shall not exceed one hundred thousand dollars (\$100,000) in any one year, and for the purpose of re-funding bonds of the City of previous issues, unless an election be duly ordered by the Mayor and City Council, and if at said election a majority of the vote polled shall be in favor of creating such debt, it shall be lawful for the City Council to make the issuance of bonds as proposed in the ordinance submitting the same at the election so held, but if a majority of the vote polled shall be against the creating of such debt, it shall be unlawful for the City Council to issue the bonds.”).

<sup>101</sup> See, e.g., *City Council Regional Boards & Subcommittees*, CITY OF ENCINITAS, <http://encinitasca.gov/Government/City-Council-Regional-Boards-Subcommittees> [<https://perma.cc/VR2C-C8FX>] (council members serve on in-house standing committees, various regional boards and committees, and other committees and task forces).

<sup>102</sup> See, e.g., *Frequently Asked Questions (FAQ) About City Government*, CITY OF TUCSON, <https://www.tucsonaz.gov/gov/frequently-asked-questions-faq-about-city-government> [<https://perma.cc/5RKE-K3ML>] (“There are some issues with which Mayor and Council must approach a higher form of government, such as the Arizona State Legislature or Congress, to get resolved. Consequently, Mayor and Council form a Legislative Agenda to advocate solutions for local problems.”).

<sup>103</sup> See, e.g., DE SOTO, MO., GOVERNMENT CODE, § 115.080, <https://ecode360.com/28314154> [on file with *Ohio State Law Journal*] (council appoints a city manager, city clerk, and city treasurer).

<sup>104</sup> *Compare About Houston*, CITY OF HOUSTON, TEX., <https://www.houstontx.gov/about/houston/citygovernment.html> [<https://perma.cc/DBG7-VNJJ>] (describing one of Houston’s city council’s roles as “confirming the mayor’s appointments”), with COLO. SPRINGS, COLO., *supra* note 70, § 3–10(e) (describing the requirement that the Colorado Spring’s city council “appoint by the concurring vote of a majority of its members a City Auditor”).

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
Creation and/or abolishment of local administrative commissions and boards <sup>105</sup>	Council and/or mayor may have authority to create and/or abolish administrative commissions. <sup>106</sup>
Approval of intergovernmental agreements <sup>107</sup>	Subject to state law requirements, <sup>108</sup> the other unit(s) of local government (i.e., the city, the county, and/or special districts) entering into the interlocal agreement typically also must approve any interlocal agreement. <sup>109</sup>
Authority over boundary change and/or local government formation <sup>110</sup>	Annexations, deannexations, dissolutions, formation of special districts, and other boundary changes may be subject to approval by city council. <sup>111</sup> State law may impose additional requirements. <sup>112</sup>
Election-related duties	Subject to requirements of state law; typically includes the duty to set election

<sup>105</sup> See, e.g., *Boards and Commissions*, CITY OF SALISBURY, N.C., <https://salisburync.gov/Government/City-Council/Boards-and-Commissions> [https://perma.cc/ZW7H-ZKLV] (council creates and appoints local boards and commissions).

<sup>106</sup> See, e.g., Brett Knese, *Hannibal City Council Creates New Roadway Commission*, WGEM NEWS (Aug. 6, 2019), <https://wgem.com/2019/08/06/hannibal-city-council-creates-new-roadway-commission/> [https://perma.cc/9YML-89HN] (“[Hannibal City] council approved an ordinance unanimously . . . to create a new roadway commission . . .”).

<sup>107</sup> See, e.g., *Atlanta City Council Approves Intergovernmental Agreement Allowing for the Transformation of Philips Arena*, ATLANTA CITY COUNCIL (June 20, 2017), <http://citycouncil.atlantaga.gov/Home/Components/News/News/162/175> [https://perma.cc/3LW4-BGY5].

<sup>108</sup> See, e.g., COLO. REV. STAT. ANN. § 29-20-105(1) (West 2019) (“Local governments are authorized and encouraged to cooperate or contract with other units of government . . . for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.”).

<sup>109</sup> See, e.g., Robert Catanese, *Savannah City Council Approves SPLOST 7 Agreement, Project List*, WTGS FOX 28 (July 22, 2019), <https://fox28media.com/news/local/savannah-city-council-approves-splost-7-agreement-project-list> [https://perma.cc/GY9Q-L7NE] (“Council passed the intergovernmental agreement with the county . . .”).

<sup>110</sup> See, e.g., ASHLAND, OR., CHARTER art. I, § 3 (1970), <https://www.ashland.or.us/SIB/files/Charter/ARTICLE%201%20Name%20and%20Boundaries.pdf> [https://perma.cc/UBT3-RSXD] (council or voters can modify city boundaries).

<sup>111</sup> See, e.g., Aaron Sanderford, *Omaha City Council Approves Annexation Package that Adds 4 Subdivisions, 1,000 People*, OMAHA WORLD-HERALD (July 17, 2019), [https://www.omaha.com/news/metro/omaha-city-council-approves-annexation-package-that-adds-subdivisions-people/article\\_4ae06aae-6ff3-51b2-8463-e68127e63ef8.html](https://www.omaha.com/news/metro/omaha-city-council-approves-annexation-package-that-adds-subdivisions-people/article_4ae06aae-6ff3-51b2-8463-e68127e63ef8.html) [https://perma.cc/8PJW-9UVA].

<sup>112</sup> See, e.g., OHIO REV. CODE ANN. § 709.02(A) (West 2019) (“The owners of real estate contiguous to a municipal corporation may petition for annexation to a municipal corporation . . .”).

<b>Powers and Duties of City Councils</b>	<b>Roles of Other Institutional Actors</b>
	dates, districts, polling locations, granting or extension of franchise. <sup>113</sup>
Investigative powers <sup>114</sup>	Not applicable.
Fulfill other duties pursuant to local, state, and/or federal law	Local, state, and/or federal law may impose other duties on city councils, to perform alone or in conjunction with other institutional actors.

### B. *Part-Time Versus Full-Time*

Part II.B begins by unpacking the meanings of “part-time” versus “full-time” in the context of city councils, and then turns to a brief discussion of why the part-time model is such a prevalent institutional design choice for city councils.

#### 1. *Defining Part-Time*

In addition to the structural features discussed above, cities can also be characterized by their use of a part-time or full-time city council.<sup>115</sup> These labels may appear to be self-explanatory, but precisely defining the terms in this context is less than straightforward.<sup>116</sup> Most cities do not officially designate council members as full-time or part-time; and in those that do, the label is rarely defined.<sup>117</sup> Elected officials are typically not considered government

<sup>113</sup> See, e.g., HOUSTON, TEX., *supra* note 100, at art. V, § 3 (“It shall be the duty of the City Council to establish the boundaries of districts covering the entire City for the purpose of electing District Council Members. Such boundaries shall be established by ordinance . . .”).

<sup>114</sup> See COMM. OF SEVENTY, *supra* note 82, at 13 (“[Philadelphia] City Council has the power to conduct special hearings, called inquiries or investigations, to gather information to aid its legislative work. A resolution authorizing an investigation must first be passed by a majority vote . . .”).

<sup>115</sup> Applying these labels to an institution serves as shorthand for the status of the elected officials serving in that institution: a part-time city council is part-time because the position of city council member is part-time.

<sup>116</sup> See *Full- and Part-Time Legislatures*, *supra* note 23 (“It seems like an easy question: Which legislatures are full-time and which ones are part-time? But with 50 different formulas for designing a state legislature, it’s difficult to paint this issue in black and white.”).

<sup>117</sup> Unlike other structural features of city government, which are typically clearly delineated in a city charter—such as the form of government as council-manager or mayor-council or the designation of council elections as at-large or by district—the part-time or full-time status of city council members only rarely is officially designated by city charter or local ordinance. See, e.g., J. Edward Johnson, Dir. of Legislative Affairs for Columbus City Council, *Employment Status of City Council Members*, Presentation Before the City of Columbus Charter Review Committee Charter Review Commission 2 (2016), [https://www.columbus.gov/uploadedFiles/Columbus/Elected\\_Officials/City\\_Council/Charter\\_Review\\_Commission/2016\\_Committee/2016-1215%20Full%20time%20v.%20part%20time%20remarks.pdf](https://www.columbus.gov/uploadedFiles/Columbus/Elected_Officials/City_Council/Charter_Review_Commission/2016_Committee/2016-1215%20Full%20time%20v.%20part%20time%20remarks.pdf) [https://perma.cc/Y63Z-2XAB] (“Often times, when

employees,<sup>118</sup> so importing definitions of the term from the employment law context does not neatly map onto the positions of city council members.<sup>119</sup> There is also no automatic correlation between the two structural forms of local government discussed above—the mayor-council form and the council-manager form—and the part-time or full-time status of elected officials.<sup>120</sup> Furthermore, because individual cities differ in terms of population and demographics, there is no standardized prototype of a part-time council, but rather a continuum of institutional design arrangements that fall under the banner of “part-time.”<sup>121</sup>

However, by surveying empirical data about the institutional design arrangements of different types of city councils, as well drawing on political

looking at the cities where council members are part-time, the language is not informative as to the necessary time and attention required to be an effective local elected official.”). For example, of the ten most populous U.S. cities, only three have charter provisions defining the part-time or full-time status of the city council or council members. *See* HOUSTON, TEX., *supra* note 100, at art. VII, § 1 (“The Councilmen shall not be required to devote their full time to the duties of their offices.”); SAN DIEGO, CAL. CHARTER, art. III, § 12(f) (2018), <https://docs.sandiego.gov/citycharter/Article%20III.pdf> [<https://perma.cc/7SQU-88BM>] (“Council members shall devote full time to the duties of their office and not engage in any outside employment, trade, business or profession which interferes or conflicts with those duties.”); SAN JOSE, CAL. CHARTER art. III, § 407 (2018), <http://sanjoseca.gov/DocumentCenter/View/85489> [<https://perma.cc/M89F-E86W>] (“The base salary shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.”).

<sup>118</sup> *See, e.g.*, CHI., ILL. MUN. CODE §§ 2-152-140(b)–(c) (defining “[e]mployees” as “individuals employed by the City of Chicago, either full-time or part-time,” and separately defining “[e]lected officials” as “the mayor, city clerk, city treasurer, and aldermen of the City of Chicago”); Karen Murphy, *County Commissioners: Full- or Part-Time?*, TALLAHASSEE REP. (Apr. 25, 2017), <http://tallahasseeereports.com/2017/04/25/county-commissioners-full-or-part-time/> [<https://perma.cc/63S7-ZWD7>] (noting that Florida county “commission positions are not specified as full- or part-time in any . . . [c]ounty charter, ordinance or Florida statute because the commissioners are not employees, they are elected officials”).

<sup>119</sup> Furthermore, the part-time label does not have a consistent meaning in the employment law context. *See, e.g.*, *Part-Time/Full-Time Status*, TEX. WORKFORCE COMM., [https://twc.texas.gov/news/efte/part\\_time\\_full\\_time.html](https://twc.texas.gov/news/efte/part_time_full_time.html) [<https://perma.cc/4WQE-GKPB>] (“Texas and federal laws leave it up to an employer to define what constitutes full-time and part-time status within a company and to determine the specific schedule of hours.”).

<sup>120</sup> *See* DeSoto et al., *supra* note 20, at 161.

<sup>121</sup> In part because there is no single, absolute definition of “part-time,” there can be confusion about what the term means even among elected officials themselves. What one person believes is a part-time position, another may believe is full-time (or vice-versa), even when those people are members of the same city council. *See* Zale, *supra* note 5, at 856–57 n.82 (describing conversations with Chicago aldermen concerning whether their positions were full- or part-time, in which “three indicated that the position was full-time; two indicated it was part-time; and one indicated it was part-time but with full-time hours”).



science literature about professionalism in state legislatures,<sup>122</sup> it is possible to identify a set of four criteria that can be used to distinguish part-time positions from full-time ones: (1) compensation; (2) permissibility of outside employment; (3) formal time commitments; and (4) institutional resources.

*Compensation.* Pay is often the clearest objective indicator of whether an elected office is considered full-time or part-time.<sup>123</sup> In studies of state legislative professionalism, higher pay is one of the signifiers of professional state legislatures,<sup>124</sup> and the more professional a state legislature is, the more likely it is to be considered a full-time legislative body.<sup>125</sup> While pay for public sector employment is not necessarily comparable to private sector employment, relatively higher pay signals that the position is a “career” position, whereas lower pay provides a signal that legislators are expected to keep their outside employment (or have independent means to support themselves).<sup>126</sup> While the salary amounts for council positions that are considered full-time vary

<sup>122</sup> See *Full- and Part-Time Legislatures*, *supra* note 23 (using the indicia of professionalism to categorize state legislatures into full-time, hybrid, and part-time bodies). Professionalism is a proxy for full-time status used by political scientists studying state legislatures. See John R. Hibbing, *Legislative Careers: Why and How We Should Study Them*, in *LEGISLATURES: COMPARATIVE PERSPECTIVES ON REPRESENTATIVE ASSEMBLIES* 37 (Gerhard Loewenberg et al. eds., 2002) (noting that factors indicating legislative professionalism include “session length, member compensation, number of staff, other perquisites, general legislative resources, and committee structures”); Gary F. Moncrief, *Recruitment and Retention in U.S. Legislatures*, in *LEGISLATURES: COMPARATIVE PERSPECTIVES ON REPRESENTATIVE ASSEMBLIES* 59 (Gerhard Loewenberg et al. eds., 2002) (“[T]he concept of legislative professionalization remains a somewhat difficult one to measure precisely. For one thing . . . [there is a] distinction between the components that are directly related to the institution [such as session length] and those that are more related to the incentive structure of the individual [such as compensation].” (internal citations omitted)); Rodriguez, *supra* note 16, at 649 (“[P]rofessionalism may be difficult to define precisely, but one key operational definition concerns whether state legislatures are made up of professional politicians charged with the responsibility to meet regularly and to conduct legislative business as their principal avocation.”).

<sup>123</sup> Lawmakers’ total compensation includes not only salary, but also non-salary benefits, such as per diem payments, expense accounts, and pension benefits. Because of the difficulty in gathering data on these non-salary forms of compensation and the enormous variation across municipalities in the availability of different types of compensation, compensation as used here refers to salary, with the recognition that salary does not necessarily reflect overall compensation. See Zale, *supra* note 5, at 860–61 (discussing non-salary, as well as non-monetary, components of city council compensation, and the challenges in measurement and comparison created by such non-salary forms of compensation).

<sup>124</sup> See *id.* at 855–56.

<sup>125</sup> *Id.* at 856.

<sup>126</sup> See *Full- and Part-Time Legislatures*, *supra* note 23 (noting that states in which legislators are well-paid and afforded large staffs usually require they spend eighty percent or more of the hours usually required for a full-time job).

considerably across cities,<sup>127</sup> a nonscientific rule of thumb is that city council salaries at or above the city's median income are more likely to be considered full-time positions, while those below that level are more likely to be considered part-time.<sup>128</sup>

*Permissibility of Outside Employment.* Part-time city council positions typically permit council members to have outside employment, subject to conflict of interest rules and other limitations.<sup>129</sup> In contrast, members of full-time city councils are less likely to engage in outside employment, although outright bans on outside employment are rare.<sup>130</sup> The permissibility of outside employment for part-time city council members reflects both expectations about the time and attention that they devote to their positions on city council, as well as the recognition that if outside employment were not permitted, only a limited pool of candidates could afford to serve in a part-time position with relatively low pay.<sup>131</sup>

<sup>127</sup> For example, in San Antonio, which recently adopted a full-time model for its city council, the annual salary for the position is approximately \$45,000, while in New York City, full-time city council member's salary is almost \$150,000 annually. See Zale, *supra* note 5, at 858–60, 869 n.142, 900 n.285 (discussing the reasons for salary disparities between city councils among the 100 most populous cities in the United States).

<sup>128</sup> See *id.* at 859–60 (noting that a city's median income is among the factors affecting city council compensation).

<sup>129</sup> For example, some part-time city councils allow outside employment in the private sector, but do not permit outside employment in the public sector, known as dual office holding. See Patricia E. Salkin, *Municipal Ethics Remain a Hot Topic in Litigation: A 1999 Survey of Issues in Ethics for Municipal Lawyers*, 14 BYU J. PUB. L. 209, 219 (2000) (“The issues surrounding dual office holding regularly arise in small, more rural municipalities where it can be difficult to recruit willing volunteers into public service. It can also arise where one person simultaneously holds two public sector jobs in an effort to earn a full-time salary.”). The permissibility of outside employment for council members may be governed by specific local ordinances or policies, or addressed through general conflict-of-interest rules. Conflict-of-interest rules, when they even exist at the local level, which is not as frequently as one might hope, are often developed and adopted as part of good government and public ethics reforms that are neither temporally nor substantively linked to the variety of other considerations that can give content to the part-time or full-time status of elected officials (i.e., compensation, staff support, etc.). See Vincent R. Johnson, *Ethics in Government at the Local Level*, 36 SETON HALL L. REV. 715, 725–26 (2006) (“Few [municipalities] have enacted a code of ethics that provides a simple and comprehensive list of do's and don't's for their officers and employees, let alone a more precise document stating obligations susceptible to legal enforcement.”).

<sup>130</sup> See Johnson, *supra* note 129, at 725–26 (discussing how municipal codes of ethics rarely provide a bright-line test for whether conduct is permissible); Zale, *supra* note 5, at 856–57 (discussing how Chicago aldermen are technically allowed to maintain outside employment, despite the position requiring full-time hours).

<sup>131</sup> See Deborah L. Markowitz, *A Crisis in Confidence: Municipal Officials under Fire*, 16 VT. L. REV. 579, 602–03 (1992).

It may not be in local government's best interest to exclude all individuals with relevant expertise from public service merely because that expertise may give rise to conflict of interest. In smaller towns, a municipality would have a particularly difficult time trying

*Formal Time Commitments.* In the state legislative context, the length of the legislative session is used as a proxy for the formal time commitments of state legislators; longer and more frequent sessions are correlated with full-time state legislatures, while shorter and less frequent sessions are correlated with part-time ones.<sup>132</sup> Unlike state legislatures, which may meet for only a few months of the year, but for full daily sessions during those months, city councils meet year-round, but typically for only a few meetings per month.<sup>133</sup> A proxy for the formal time commitments of city council members therefore might be the average number and length of regular, special, and committee meetings attended per member per month.<sup>134</sup> Councils that meet more frequently and impose greater committee obligations on their members are more likely to be characterized as full-time, while councils that meet less frequently and use committees to a lesser extent are more likely to be characterized as part-time.<sup>135</sup>

However, it is important to recognize that formal time commitments, as measured by meeting and committee schedules, only represent part of the overall amount of time council members spend on council-related work. Council members typically must spend additional time in preparation for formal meetings by reviewing materials, meeting with staff, and holding informal

to find volunteers for its boards if service required volunteers to sever all employment and business connections with the municipality. The goal of local government must be to strike a balance between encouraging broad participation by respecting the legitimate personal interests of public officeholders and preventing conflicts of interest and biases which could adversely influence the objective functions of government.

*Id.*

<sup>132</sup> See Amelia Thomson-DeVeaux, *How Much Should State Legislators Get Paid?*, FIVETHIRTYEIGHT (Apr. 7, 2016), <https://fivethirtyeight.com/features/how-much-should-state-legislators-get-paid/> [https://perma.cc/2NCG-4WJN] (“Some states with smaller populations, like Montana and New Hampshire, are ‘part-time’ legislatures, with shorter sessions and fewer constituents.”); *Full- and Part-Time Legislatures*, *supra* note 23 (stating that full-time legislatures “generally spend more time on the job because their sessions are longer”).

<sup>133</sup> See GINSBERG ET AL., *supra* note 3, at 15 (finding, in a survey of fifteen city councils, the median number of weeks during the summer with no official business scheduled was only six); MacManus, *supra* note 15, at 175 (observing city councils for larger municipalities typically meet weekly, whereas councils for smaller municipalities may meet only monthly or bi-monthly).

<sup>134</sup> Committees are regularly used by councils in cities of all sizes and forms of government, though committee use is somewhat higher in larger cities and in those that use the mayor-council form of government. See SVARA, TWO DECADES, *supra* note 15, at 26–27 (citing statistics on committee use by city size and form of government and indicating that 91% of large cities, 76% of medium cities, and 71% of small cities use committees).

<sup>135</sup> See MacManus, *supra* note 15, at 175 (noting that larger cities, which are more likely to utilize full-time city councils, typically hold weekly meetings, while cities under 10,000 residents in size, which are likely to almost uniformly use part-time city councils, hold bimonthly or monthly meetings, and that council meetings are also “longer in larger cities. The typical council meeting lasts two to four hours in over half of all cities, but four to eight hours in nearly one-fourth of the cities, mostly the larger ones”).

gatherings with the public and interest groups.<sup>136</sup> In addition, as discussed in the previous Part, council members typically provide ongoing constituent services to residents.<sup>137</sup> The amount of time spent on constituent services necessarily varies by individual council member and the particular needs of their constituents, but empirical data from surveys of council members, as well as abundant anecdotal evidence, indicate that constituent services are a significant and time-consuming part of a council member's job, ranging from one-third to one-half of the total time council members spend on council-related work.<sup>138</sup>

*Institutional Resources.* A final indicator of the part-time or full-time status of city councils is the extent of institutional resources provided to council members. These resources include the number of staff per council member, the budget given to council members to run their offices, and whether an office is even provided. While there is no set amount of institutional resources that delineate a part-time council from a full-time one, the greater the resources provided to the legislative body to support its operation, the more likely it is to

<sup>136</sup> There may be temporary expansions in the role of local elected officials, such as after a disaster, during which a part-time position in city government becomes a de facto full-time one. See Rojas, *supra* note 87.

<sup>137</sup> See SVARA, TWO DECADES, *supra* note 15, at 11 (presenting survey results on how much time council members reported spending on constituent services in proportion to overall time spent on council-related activities).

<sup>138</sup> See *id.* Many members of part-time state and local legislative bodies would contend that when constituent services and other ongoing responsibilities are taken into account, their role is actually a full-time one. See, e.g., *Getting Paid: Debating the Council's Outside Income and Salaries*, GOTHAM GAZETTE (Dec. 10, 2007), <https://www.gothamgazette.com/economy/3738-getting-paid-debating-the-councils-outside-income-and-salaries> [<https://perma.cc/9GMA-D5VJ>] (quoting a city council member who reported, "We don't work five days a week . . . You go to church and you still deal with constituent service [sic]."); Liz Shepard, *Counties Differ in How They Pay Board Members*, TIMES HERALD (Dec. 6, 2014), <http://www.thetimesherald.com/story/news/local/2014/12/06/counties-differ-pay-board-members/20014979/> [<https://perma.cc/QF4G-ZR83>] (quoting a part-time county commissioner: "I spend more time doing this job than I do my real job."); see also SQUIRE & MONCRIEF, *supra* note 10, at 218 ("It is almost certainly the case that the general public overestimates the amount legislators are paid and underestimates the amount of work involved."); John Aguilar, *Aurora Voters Choose Whether to Give Elected Leaders a Pay Hike*, DENVER POST (Apr. 17, 2017), <https://www.denverpost.com/2017/04/17/aurora-voters-choose-elected-leaders-pay-hike/> [<https://perma.cc/SV5W-YGGS>] ("Aurora Councilwoman Marsha Berzins said that although she and her council member colleagues are not classified as full-time employees, she still works 50 hours or so a week on city business. She said she had to give up her job working for an airline at Denver International Airport during her first year on council because she didn't have time to do both jobs, even though the city's charter stipulates that council members shouldn't put more than 20 hours a week into the job. 'I realized I couldn't do justice to the citizens of Aurora and have another job. . . ."); Smith, *supra* note 6 ("[F]or most members, the demands of [the Texas state legislature] aren't quite limited to January through May in odd-numbered years [as the state officially dictates]. The needs of their constituents and the issues they must follow to make public policy don't go away during the interim, nor do the campaigns they must orchestrate to stay in office.").

be considered full-time.<sup>139</sup> Conversely, the more limited the resources, the more likely the body is considered part-time.<sup>140</sup>

The factors laid out above provide a set of criteria that can be used to designate a city council as either full-time or part-time. These labels are not meant to be talismanic; certain criteria, such as low levels of compensation and few institutional resources, may indicate that a particular council position is designed to be part-time, but these criteria may fail to reflect the actual full-time governing responsibilities and time commitments required of the position.<sup>141</sup> The criteria may also point in conflicting directions as to what the status of a particular city council is: for example, a council position with a salary at or near the city's median income that still allows for outside employment might be categorized as full-time in some cities, but part-time in others.<sup>142</sup> Furthermore, context is important: the same factors that might demarcate a council position as a part-time one in a major urban center—for example, a salary of \$40,000 and a single staffer for each member—might qualify it as a full-time position in a smaller municipality. But despite the lack of a bright-line demarcation between a full-time council and a part-time council, the criteria laid out above offer a way to give content to these labels. With this definitional framework in place, the next Part turns to the question of why so many cities utilize the part-time model for their city councils.

<sup>139</sup> See *supra* note 138.

<sup>140</sup> Staff support for councils is typically lower in council-manager cities (across all sizes) than mayor-council cities because of the assumption that council can rely on the city manager and her staff for necessary support. See SVARA, TWO DECADES, *supra* note 15, at 27–28. In contrast, in mayor-council cities, because of the separation of legislative and executive power between the council and mayor, councils in cities of all sizes are more likely to have staff support. See *id.* (presenting empirical data from a 2001 study of city councils indicating that 97% of city councils in large cities with the mayor-council form of government had council staff versus 80% of city councils in large cities with the council-manager form of government; 61% of city councils in medium cities with the mayor-council form of government had council staff versus 42% of city councils in medium cities with the council-manager form of government; and 36% of city councils in small cities with the mayor-council form of government had council staff versus 23% of city councils in small cities with the council-manager form of government).

<sup>141</sup> See GINSBERG ET AL., *supra* note 3, at 10 (“In many of the cities, the official designations of ‘full-time’ and ‘part-time’ have become irrelevant for council members.”); MacManus, *supra* note 15, at 175 (citing statistics on the amount of time council members spend on council matters and noting that “in spite of the fact that a council position technically may be ‘part-time,’ it is closer to a full-time job for many”).

<sup>142</sup> For example, in Philadelphia, the city council is paid a six-figure salary; however, because the city's conflict of interest rules permit council members to retain outside employment (with some caveats), several council members maintain their private-sector, full-time jobs, resulting in ethical concerns and perception problems. See Chris Brennan, *Despite Six-Figure Salary, City Council Still a Part-Time Job for Some*, PHILA. ENQUIRER (Aug. 8, 2016), [http://www.philly.com/philly/news/politics/20160809\\_Despite\\_six-figure\\_salary\\_city\\_council\\_is\\_still\\_a\\_part-time\\_job\\_for\\_some.html](http://www.philly.com/philly/news/politics/20160809_Despite_six-figure_salary_city_council_is_still_a_part-time_job_for_some.html) [https://perma.cc/S4NN-7YLD] (reporting about the “perception problem” that outside employment creates in Philadelphia).

## 2. *The Prevalence of the Part-Time Model*

As noted in the Introduction, the overwhelming majority of cities—eleven out of every twelve of the nearly 20,000 municipalities in the U.S.—utilize the part-time model for their city councils.<sup>143</sup> And although the very largest of U.S. cities are more likely to have a full-time city council, the part-time model is otherwise the prevailing institutional design outcome across cities of all sizes, including growing mid-size and larger cities where it might not be expected.<sup>144</sup>

This Part explores why the part-time model of city councils is so prevalent. Drawing on both public administration literature about local governance structures and political science research on legislative professionalism, this Part identifies several factors related to the objective characteristics of cities, subjective preferences of residents, and background settings of state law, which operate as drivers of the part-time model for city councils. Given the differences between individual cities and background principles of state law in different states, the relative weight of the factors discussed herein as an explanation for a particular city's choice of the part-time model will necessarily vary. But taken together, they provide a cohesive, descriptive account of why the part-time model is the prevailing institutional design choice for city councils.

*Population and Demographics.* The first explanation for the prevalence of part-time city councils is simply that the governance responsibilities of most city councils are limited due to the small size and homogeneous populations of most cities. As noted in Part II.A, although the term “city” may instinctively connote a major urban metropolis, in fact, the vast majority of cities are small incorporated places.<sup>145</sup> According to the most recent available census data, of the 19,519 incorporated municipalities, almost half—9205—are cities with less than 1000 residents.<sup>146</sup> Most of the remaining cities—7339—have less than 10,000 residents,<sup>147</sup> meaning nearly 85% of all municipalities are places with less than 10,000 residents.<sup>148</sup> Of the nearly 20,000 cities in the United States, only a few hundred exceed 50,000 residents, and only 61 cities have populations over 300,000.<sup>149</sup>

<sup>143</sup> Svara & Auer, *supra* note 2, at 29.

<sup>144</sup> *See id.* (“Only 260 cities (8%) reported having full-time members and another 45 have a combination of full and part-time members . . .”).

<sup>145</sup> *See* U.S. CENSUS BUREAU, *supra* note 36.

<sup>146</sup> *Id.*

<sup>147</sup> This total is based on the most recently available census data (2012), which indicates that 3584 municipalities have 1000–2499 residents; 2088 municipalities have 2500–4999 residents; and 1667 municipalities have 5000–9999 residents. *Id.*

<sup>148</sup> *See id.*; Sarah Gibb & Rodger Johnson, *Growth in Small Town America*, U.S. CENSUS BUREAU BLOG (May 21, 2015), <https://www.census.gov/newsroom/blogs/random-samplings/2015/05/growth-in-small-town-america.html> [<https://perma.cc/YS5J-Z64U>] (making this calculation based on the underlying data cited above).

<sup>149</sup> It is worth noting the distinction between the fact that the majority of cities are small incorporated places, but the majority of the U.S. population lives in larger incorporated places. *See* U.S. CENSUS BUREAU, *supra* note 36 (indicating that approximately 3.65 million

Not only is the population of most U.S. cities relatively low, but the residents of many cities are also often fairly homogeneous in terms of socioeconomic characteristics such as race, ethnicity, average income, and education levels.<sup>150</sup> As a result, there is unlikely to be the diversity of interest groups vying for the time and attention of local lawmakers that would be seen in a major urban area.<sup>151</sup> While there still may be issues that spark intense disagreements about local government decision-making even under these conditions—land use being a common example—the extent of conflict in many cities is limited by the relative homogeneity of residents.<sup>152</sup> Furthermore, as a practical matter, in smaller cities, there is a proportionally smaller pool of individuals to run as candidates for city council.<sup>153</sup> Thus, there may simply be not enough people who would be willing or able to serve in a full-time body.<sup>154</sup>

*Scope of Governance Authority.* The governance responsibilities of local lawmakers are also limited by state law. How much authority cities have varies by state, as well as within states, depending on whether the city is a home rule

people in the United States live in 9205 cities with populations of under 1000 residents, while 51.1 million people live in 61 cities with populations greater than 300,000).

<sup>150</sup> See J. ERIC OLIVER, *DEMOCRACY IN SUBURBIA* 71–72 (2009) (“Although the economic differentiation between central cities and suburbs is well known, what is not often recognized is how internally homogeneous many of these communities are . . . American cities in general are highly stratified by income . . . [M]iddle income cities hold a wide range of income groups, but richer cities tend to have only rich people and the poorest cities tend to have mostly poor people.”); Schragger, *Strong Mayors*, *supra* note 16, at 2576 (noting that “smaller, more homogeneous communities” often are able to use “technocratic” governance forms, such as part-time councils and professional city managers, in part because “those communities have found ways to insulate themselves from larger economic and demographic dislocations. As economic and demographic circumstances change, however, suburban municipalities will increasingly need political—not just technocratic—governance.”).

<sup>151</sup> See MORE THAN MAYOR OR MANAGER, *supra* note 15, at 6 (discussing how the council-manager form of government tends to align with the needs of “small, harmonious communit[ies]” because in smaller cities, the population is less likely to be “a collection of competing interests” and more likely to be a “community with shared interests”); Robert Cropf et al., *St. Louis: Déjà Vu All over Again—Charter Reform Fails*, in MORE THAN MAYOR OR MANAGER, *supra* note 15, at 266 (“[T]he larger the city, the more public services it provides. In other words, the scope and substance of the functional responsibilities of larger cities tends [sic] to be on the whole greater and more diverse than those of smaller ones.”).

<sup>152</sup> See OLIVER, *supra* note 150, at 71 (discussing the lack of conflict in many small, homogeneous cities).

<sup>153</sup> See Markowitz, *supra* note 131, at 603 (“In smaller towns, a municipality would have a particularly difficult time trying to find volunteers for its boards if service required volunteers to sever all employment and business connections with the municipality.”); *How To: Reduce the Size of Council; Section 818 of the Borough Code*, PA. ST. ASS’N BOROUGHS, <http://boroughs.org/ckfinder/userfiles/files/How%20to%20Reduce%20Number%20of%20Council.pdf> [https://perma.cc/CE62-T55P] (describing a Pennsylvania law that allows municipalities that are unable to fill all the seats on their local legislative body to formally reduce the size of body).

<sup>154</sup> *Id.*

city. While home rule cities have a relatively broad lawmaking authority, non-home rule cities have only those powers that state law expressly gives them.<sup>155</sup> To gain home rule status, a city typically must have a certain minimum population and adopt a charter;<sup>156</sup> smaller cities may fail to meet one or both of these qualifications. Thus, to the extent that a city is a non-home rule city whose legal authority is limited under state law, there simply may not be a need for a full-time city council, since state law limits the set of governing duties to be accomplished.

*Fiscal Constraints.* Cities, arguably to a greater extent than other levels of government, operate in a severely fiscally constrained environment. Not only are they limited in their revenue-raising ability by numerous tax and expenditure limitations imposed under state law, but they also face competitive incentives to provide tax incentives to mobile capital.<sup>157</sup> For small cities—and as noted above, most cities are small cities—fiscal constraints may loom especially large: annual budgets in such cities experience greater variances and are subject to more limitations on revenue raising under state law.<sup>158</sup> While the salaries of a handful of city council members may not be a particularly large percentage of a city's overall budget, for these types of smaller cities, the cost of full-time salaries and other benefits for elected officials may be a significant cost.<sup>159</sup> The part-time model may also be perceived as offering cost savings not only because council members are paid less than full-time council members,<sup>160</sup> but also because the part-time nature of the job is seen as cabining the ability of the city council to engage in activities that would expand government programs or services and thereby increase the overall tax burden of residents.

*Subjective Preferences of Residents.* The underlying values associated with the part-time model—such as those associated with civic volunteerism, limited government, and fiscal restraint—also reflect the subjective preferences of

<sup>155</sup> See BRIFFAULT & REYNOLDS, *supra* note 41, at 327 (describing how Dillon's Rule constrains the authority of non-home rule cities to those powers that are expressly granted or necessarily implied).

<sup>156</sup> See *id.* at 330 (“[I]n many states, home rule extends only to some cities (usually the more populous ones) and counties (usually the most urbanized ones), not to all.”); Zale, *supra* note 5, at 863 n.105 (“[T]o assert home rule powers, typically a local government must enact a charter . . .”).

<sup>157</sup> See generally RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE (2016) (discussing the constraints imposed on cities) [hereinafter SCHRAGGER, CITY POWER].

<sup>158</sup> John Rogard Tabori et al., Town of Univ. Park, Md., Presentation at the Annual Conference of the Mississippi Municipal League: Budget Planning and Economic Forecasting, A Small Town Perspective (June 29, 2011), <http://www.mdmunicipal.org/DocumentCenter/View/31/Budget-Planning-and-Economic-Forecasting-FINAL?bidId=> [<https://perma.cc/74AF-QPEC>] (noting that small towns often have limited taxation authority, which can lead to greater revenue instability).

<sup>159</sup> See *id.* (describing labor as “the primary cost driver” of small town budgets).

<sup>160</sup> There is wide variation, however, in pay across full- and part-time local legislative bodies, both by type (city council, county commission, etc.) and by size of the locality. See Zale, *supra* note 5, at 857.



many Americans. Polls consistently show that a majority of Americans believe “big government” is the greatest threat to the country.<sup>161</sup> A central premise of the Republican platform is that smaller government is better government.<sup>162</sup> Even Democrats, who have been traditionally more supportive of an expansive role for the government, have joined the calls for less government.<sup>163</sup> By its very design, the part-time model reflects these sentiments: by imposing fewer formal time commitments, providing low compensation, and maintaining an expectation that members will retain outside employment, the part-time model limits the amount of governing a city council will likely engage in.<sup>164</sup>

Furthermore, governance in the form of a nonprofessional citizen legislature reflects longstanding sociopolitical concerns about government power in the

<sup>161</sup> Noam Fishman & Alyssa Davis, *Americans Still See Big Government as Top Threat*, GALLUP (Jan. 5, 2017), <http://www.gallup.com/poll/201629/americans-big-government-top-threat.aspx> [<https://perma.cc/VT6E-YQ56>] (discussing a 2017 Gallup poll in which 67% of those polled thought that “Big Government” was the country’s greatest threat; 26% of respondents indicated “Big Business” was the greatest threat; 5% indicated “Big Labor” was the greatest threat).

<sup>162</sup> See Yoni Appelbaum, *Trump Wants to Make Government Huge Again*, ATLANTIC (Mar. 13, 2016), <https://www.theatlantic.com/politics/archive/2016/03/trump-government-ethnocentrism/473538/> [<https://perma.cc/AR5X-DBHS>] (quoting three of the 2016 Republican presidential candidates: “‘I will fight anyone who wants to expand government,’ Marco Rubio vowed. In Ohio, ‘We shrunk the government,’ John Kasich boasted. ‘Government is the problem!’ insisted Ted Cruz. ‘Here’s my philosophy. The less government, the more freedom. The fewer bureaucrats, the more prosperity.’”).

<sup>163</sup> See, e.g., Mark Pazniokas & Keith M. Phaneuf, *Malloy Warns of Need for Concessions, Smaller Government, New Aid Formulas*, CONN. MIRROR (Jan. 4, 2017), <https://ctmirror.org/2017/01/04/malloy-upbeat-yet-warns-of-labor-concessions-smaller-government/> [<https://perma.cc/MAE4-GKFU>] (describing the 2017 State of the State speech by Connecticut’s Democratic governor as focusing on “how to further shrink state government, extract more concessions from unions on pension and health benefits, and better focus a smaller pool of state aid for education on the systems most in need”); see also John Buntin, *Does Eric Garcetti Have a Big Enough Vision for L.A.?*, GOVERNING STATES & LOCALITIES (Aug. 2014), <http://www.governing.com/topics/mgmt/gov-eric-garcetti-los-angeles-mayor.html> [<https://perma.cc/VK5W-J69K>] (“Many Angelenos seem fed up with government and are not clamoring for more. ‘People think of California as liberal. We’re actually very libertarian,’ says [Los Angeles Mayor Eric] Garcetti. ‘I have to make the case to a committed liberally voting, but libertarian, skeptical electorate, that says, ‘You tell me why I need this stuff,’ not, ‘Please get me this stuff.’”).

<sup>164</sup> In this sense, the part-time model can also serve as an anti-entrenchment device, since its limited power and limited pay may reduce the appeal of the position to those who would focus more on getting reelected than on lawmaking. See Daryl Levinson & Benjamin I. Sachs, *Political Entrenchment and Public Law*, 125 YALE L.J. 400, 402 (2015); David L. Sollars, *Institutional Rules and State Legislator Compensations: Success for the Reform Movement?*, 19 LEGIS. STUD. Q. 507, 517 (1994) (“If a legislator views the job as a career rather than a temporary interlude, keeping the job becomes a paramount concern and many incentive problems arise for the members . . . [and] a vast amount of time and effort is spent in pursuit of reelection.” (citation omitted)).

United States.<sup>165</sup> While full-time, professional legislatures may have advantages over citizen legislatures in terms of resources, expertise, and experience, full-time legislatures can raise concerns about a “separate class” of career politicians.<sup>166</sup> The part-time legislative model arguably can serve as a bulwark against such a separate class developing, by attracting “regular” citizens who are expected to maintain their prior careers, as opposed to those interested in government service as a full-time career.<sup>167</sup> Part-time, nonprofessional, citizen governance, the argument goes, can serve “as a democratic check on government and [ensure] that government is responsive to the interests of the public.”<sup>168</sup> The part-time model also appeals to norms in favor of public service, with many of those who hold part-time office at the local level conceding that the position may objectively impose time demands rising to a full-time commitment, but also viewing it as a way of giving back to the community.<sup>169</sup>

<sup>165</sup> See, e.g., Bobby Jindal, *Congress Should Be a Part-Time Job*, HILL (Dec. 1, 2010), <http://thehill.com/blogs/congress-blog/politics/131361-congress-should-be-a-part-time-job> [<https://perma.cc/599C-RZ6P>] (arguing that the “Founding Fathers envisioned that being a member of Congress would be a part-time job” and noting that at one time, “Pennsylvania’s state constitution even had a provision calling for members of the Legislature to ‘have some profession, calling, trade, or farm, whereby he may honestly subsist.’ Otherwise, they feared legislators would come to rely on politics as a career, and they would be unable to ‘preserve [their] independence.’”).

<sup>166</sup> Studies of state legislatures have found that “the more professional the legislature, the less people approve of it . . . even though . . . contact between representatives and the represented increases with professionalization, as does policy responsiveness.” See SQUIRE & MONCRIEF, *supra* note 10, at 208.

<sup>167</sup> See, e.g., Salvatori & Allen, *supra* note 9 (voicing the concerns of two former city council members over a proposed pay raise for the current council, who believed that “citizens want their council members to have real jobs, because it is one thing to pass legislation, but quite another to have to comply with it”); Linton Weeks, *Hey Congress: Keep Your Day Jobs*, NPR (Dec. 28, 2010), <http://www.npr.org/2010/12/28/132294306/hey-congress-dont-keep-your-day-jobs> [<https://perma.cc/8B9B-S5C5>] (quoting a part-time Nevada state legislator, who said that, “unlike certain places that have full-time legislatures . . . in Nevada we have people in our legislature who are teachers, who run nonprofits, who are small-business people, are ranchers, all of whom give a diverse perspective on setting public policy for the state”); Peter Crispino, *For Part-Time Elected Officials, Public Office Is a Juggling Act*, PASADENA VOICE (Mar. 24, 2015), <http://www.pasadenavoice.com/stories/for-part-time-elected-officials-public-office-is-a-juggling-act,16427> [<https://perma.cc/XK7E-N54Z>] (“‘In some ways, I think [a part-time position] keeps you grounded,’ [Maryland County Commissioner] Trumbauer continued. ‘Every day, I face the same struggles that many of my constituents face with family life or budget decisions and the day-to-day grind of a job . . . as opposed to a full-time politician, which by its very definition makes you different than everybody else.’”).

<sup>168</sup> See Beth Nolan, *Public Interest, Private Income: Conflicts and Control Limits on the Outside Income of Government Officials*, 87 NW. U. L. REV. 57, 84 (1992) (“In general, the democratic goal of government in the public interest is served by citizen governance, while the concept of a permanent governing elite is antithetical to the principles of democracy.”).

<sup>169</sup> See SVARA, TWO DECADES, *supra* note 15, at 14–15 (presenting data on reasons council members reported running for office and noting most report “service orientation” reasons, such as “to help a neighborhood, to address issues, and/or to provide leadership for

The force of subjective preferences also helps explain why the part-time model remains the prevailing institutional design choice even in larger cities. It might be expected that as cities grow in size and face more numerous and complex policymaking choices that require more time, attention, and resources from elected officials, a full-time city council would more effectively serve the public interest. But deeply held beliefs in subjective values about citizen legislatures and limited government can drown out objective factors that otherwise indicate that the part-time model is misaligned with the complex and numerous governance needs of larger cities.<sup>170</sup>

*Background Principles of State Law.* As noted above, the prevalence of the part-time model stems in part from fiscal constraints imposed under state law as well as substantive limitations on the scope of local authority.<sup>171</sup> But state law also operates in indirect ways to make the part-time model a likely institutional design choice for city councils. For example, permissive incorporation laws in many states set low population thresholds for the formation of new municipalities, making it likely that the types of cities that currently exist (and that are likely to be formed in the future) are the types of cities whose objective characteristics align with the part-time model for the reasons discussed above.<sup>172</sup> The wide range of special purpose districts authorized under state law also makes it possible for cities of any size to be “minimal cities”: cities can outsource many traditional core government services, such as sanitation, stormwater management, and public safety, to special districts, and there often will be fiscal and legal advantages to doing so.<sup>173</sup> When services are carved out to special districts, which have their own leadership and governing structures,

some group”); see also Salvatori & Allen, *supra* note 9 (“Most cities have part-time councils, and service is considered a civic duty.”). But see Alvin D. Sokolow, *Legislators Without Ambition: Why Small-Town Citizens Seek Public Office*, ST. & LOC. GOV’T REV. 23, 23 (1989) (finding that “personal and policy incentives, more than appeals to civic obligation, dominated the recruitment decisions and actions” of local elected officials in a small sample of cities).

<sup>170</sup> The force of these subjective preferences also helps explain why some large states, such as Texas, continue to utilize the part-time model for their state legislatures. See Smith, *supra* note 6 (noting that although the founders of Texas envisioned a part-time legislature, where lawmakers would only meet during the legislative session for five months every other year and remain connected with their constituents and maintain outside employment the rest of the time, the modern reality is that “the demands of public office aren’t quite limited to January through May in odd-numbered years.” Despite this disconnect between the demands of the job and the part-time status (and pay), “[t]here hasn’t been a major move to raise lawmakers’ annual compensation since 1989” and “the political tides remain unlikely to shift”).

<sup>171</sup> See Tabori et al., *supra* note 158 (noting that small towns often have limited taxation authority, which can lead to greater revenue instability).

<sup>172</sup> See STEWERT E. STERK ET AL., LAND USE REGULATION 716–17 (2d. ed. 2016) (discussing permissive incorporation law regimes in states).

<sup>173</sup> See generally Sara C. Galvan, *Wrestling with MUDS to Pin Down the Truth About Special Districts*, 75 FORDHAM L. REV. 3041 (2007) (discussing the history and growth of special districts).

the burden on city lawmakers to oversee and make policy related to that subject area is correspondingly reduced, thereby making a full-time legislative body less necessary.<sup>174</sup> Other state laws operate more directly to promote the part-time model of city councils, such as state laws which cap permissible compensation for local elected officials or that tightly prescribe the duties of local elected officials.<sup>175</sup>

Background principles of state law also operate in subtle ways to contribute to the prevalence of the part-time model. For example, the legal status of cities as “creatures of the state” and the fact that city governments have traditionally been viewed primarily as service providers, and not as sites of policymaking, reinforce a view of cities as limited sites of governance, needing only limited forms of government.<sup>176</sup> Even in larger cities with more heterogeneous populations, diversity of interest groups, and complex sets of policy problems, their perceived “smallness” (as compared to the state) may lead to continued support for the part-time model: if the state of Texas or Arizona can function with a part-time state legislative, then arguably smaller units of government, such as Dallas or Phoenix, even if they are major cities, should be able to do so as well.

While part-time city councils are a prevalent and persistent outcome in cities for the reasons discussed above, the part-time model is not without tradeoffs. A range of arguments can be made regarding the part-time model when it is

<sup>174</sup> Similarly, state laws that authorize privatization make it possible for cities to contract out for many core governmental services traditionally associated with city government. *See generally* Russell Nichols, *The Pros and Cons of Privatizing Government Functions*, GOVERNING STATES & LOCALITIES (Dec. 2010), <https://www.governing.com/topics/mgmt/pros-cons-privatizing-government-functions.html> [<https://perma.cc/YM V3-LZ7G>] (discussing advantages and pitfalls for state and local governments contracting out tasks such as trash collection, road repair, and water management).

<sup>175</sup> *See, e.g.*, MASS. GEN. LAWS ANN. ch. 43, § 17B (West 2018) (limiting city council member salaries to \$2000 for cities with populations less than 50,000 and \$3000 for cities with populations over 50,000); Eugene Curtin, *Is Bellevue Ready for a Full-Time Mayor?*, BELLEVUE LEADER (Nov. 2, 2016), [https://www.omaha.com/sarpy/bellevue/is-bellevue-ready-for-a-full-time-mayor/article\\_20c07619-9925-5686-813d-315e0926d664.html](https://www.omaha.com/sarpy/bellevue/is-bellevue-ready-for-a-full-time-mayor/article_20c07619-9925-5686-813d-315e0926d664.html) [<https://perma.cc/KA2B-ZR2D>] (“A debate likely to emerge in the new year is whether the City of Bellevue should declare the mayor’s job to be a full-time position, and whether a full-time mayor can be granted more power without running afoul of state laws that closely define the duties and privileges of mayors who head cities of the first class.”). In addition, some states have laws that limit how frequently a city charter may be changed, and these laws may also operate as a constraint on the ability of cities to make structural changes to their city councils. *See, e.g.*, Clif LeBlanc & John Monk, *Columbia Voters Reject Strong Mayor*, STATE (Dec. 3, 2013), <https://www.thestate.com/news/politics-government/article13830737.html> [on file with *Ohio State Law Journal*] (referring to a South Carolina state law that “requires at least four years between referendums to change a city’s form of government”).

<sup>176</sup> *See* SCHRAGGER, CITY POWER, *supra* note 157, at 57 (“[T]he history of local government law in the states has been an ongoing effort to redefine, control, and limit city power, not expand it.”).

contested as an institutional design choice. These range from concerns about its potential to limit elected office to only those who can afford to serve and the impacts on the diversity of elected officials;<sup>177</sup> to questions about the representativeness of an institution whose members may need to regularly recuse themselves because of conflicts related to their outside employment;<sup>178</sup> to the challenge of devising ethical rules that ensure adequate disclosure and transparency about part-time lawmakers' outside interests without imposing requirements that are so onerous that they serve as a deterrent to public service.<sup>179</sup> Conditions in growing mid-sized and larger cities, where there is a greater diversity of competing interests and more numerous and complex governance needs, may particularly raise concerns about the welfare consequences of a part-time city council.<sup>180</sup> While much more could be written about each of these concerns, a comprehensive reckoning of all of the policy and legal implications of the part-time model is beyond the scope of this Article. The more modest goal here is to hone in on how the part-time model impacts the power of city council vis-à-vis other institutional actors, and why those power dynamics matter. The next Part develops a framework that can help clarify and refine our intuitions about what the part-time model means for local legislative power.

### III. THE POWER DYNAMICS OF PART-TIME CITY COUNCILS

Part II provided an overview of what the part-time model for city councils looks like and why it is such a prevalent institutional design choice in cities. Part III turns to analyzing the largely unexplored question of how the part-time model shapes the power dynamics of local government. Part III.A begins by analyzing why part-time city councils have less power than full-time ones, in terms of institutional resources, legislative capacity, and political capital. Part III.B deepens the analytical framework by mapping out how the part-time model can both produce power vacuums and redistribute power away from city councils to other institutional actor. In the former situation, power is unexercised

<sup>177</sup> See, e.g., Lauren Bishop, *Should City Council Members Be Full-Time Employees? Thomas Says Yes*, COLUMBIA MISSOURIAN (Feb. 20, 2019), [https://www.columbia-missourian.com/news/local/should-city-council-members-be-full-time-employees-thomas-says/article\\_3750a436-2e1b-11e9-ae24-2f6f7e5fb9a9.html](https://www.columbia-missourian.com/news/local/should-city-council-members-be-full-time-employees-thomas-says/article_3750a436-2e1b-11e9-ae24-2f6f7e5fb9a9.html) [https://perma.cc/XSF2-GGG6] (discussing a proposal to make Columbia, Missouri city council members full-time to make the council more diverse).

<sup>178</sup> See Johnson, *supra* note 129, at 767–69 (outlining the statutory requirement of recusal when faced with conflicts of interest in outside employment).

<sup>179</sup> See, e.g., Douglas E. Larson, *A Model Ethical Code for Appointed Municipal Officials*, 9 HAMLINE J. PUB. L. & POL'Y 395, 395 (1989) (“[T]he very structure of some local government functions cause[s] ethical conflicts for elected and appointed officials which exacerbates the difficulty of conducting assigned responsibilities in an open and equitable fashion.”).

<sup>180</sup> See SVARA, TWO DECADES, *supra* note 15 (discussing the increasing amount and complexity of problems that elected leaders in larger cities must respond to).

by the part-time city council and no other institutional actor takes action, while in the latter situation, other institutions exercise power in ways that may diverge from how that power would have been exercised by city council.

*A. The Diminished Power of Part-Time Local Legislatures*

All things being equal,<sup>181</sup> part-time and full-time city councils have equivalent legal powers, in terms of formal legal authority. In delegating legal authority to cities, state law typically does not make any distinction between whether that authority is exercised by a full-time city council or a part-time one. The designation of “city” under state law confers the same legal authority whether the city is a small town with a part-time city council or a major urban metropolis with a full-time city council: any incorporated municipality will typically have land use authority, authority to raise revenues through taxes and various fees, and general police power authority.<sup>182</sup> Thus, from a formalistic perspective, if two cities are of the same legally designated class and home rule status under state law, a part-time city council in one city has the same formal legal authorities as a full-time city council in another city. However, as scholars have recognized in a range of contexts, formal legal authority is not the same as functional power,<sup>183</sup> and there is a significant difference in how part-time and

<sup>181</sup>I refer here to cities that have equal formal legal authority under state law. For example, charter (i.e., home rule) cities are vested with greater legal authority and powers under state law than non-charter cities. Similarly, some states categorize municipalities into different classes (usually by population bands) and grant different levels of authority to different classes. Within these categories, however, the legal authority granted under state law generally does not distinguish between full-time or part-time city councils: the city council, whatever its form, simply can exercise the legal powers granted to the local legislative body under state law. *See generally* SCHRAGGER, CITY POWER, *supra* note 157, at 62–64 (discussing home rule cities, the fight over relative formal power, and the effort to limit the lawmaking role of the city’s legislative delegation).

<sup>182</sup>*See* Briffault, *supra* note 14, at 73 (“Municipal corporations—variously known as cities, boroughs, towns or villages—are general purpose governments [sic], providing a broad array of public services and authorized to exercise general police powers and impose general taxes on residents within the territorial limits.”). This general statement is subject to a few caveats. As noted above, state law distinguishes between charter and non-charter cities, with the former typically being granted broad home rule authority under state law, the latter only specific grants of authority in specific state laws, such as a state zoning enabling act. There may also be some state legal authority that is dependent on population size. *See* BRIFFAULT & REYNOLDS, *supra* note 41, at 330 (“[I]n many states, home rule extends only to some cities (usually the more populous ones) and counties (usually the most urbanized ones), not to all.”); Zale, *supra* note 5, at 865 (“Typically, home rule local governments are given authority to set their procedures for city council compensation while general law cities’ council compensation procedures are set by state law.”).

<sup>183</sup>*See* SCHRAGGER, CITY POWER, *supra* note 157, at 1 (examining the nature of city power and distinguishing between a city’s formal authority to engage in specific activities and its actual capacity to govern); *see also* Alan Rosenthal, *The Good Legislature*, NCSL ST. LEGISLATURES MAG. (July/Aug. 1999), <http://www.ncsl.org/research/about-state-legislatures/the-good-legislature.aspx> [https://perma.cc/5TYU-SHFQ] (“Although we

full-time city councils exercise their formal legal authority, due to differences in institutional resources, legislative capacity, and political capital.

*Institutional Resources.* As noted above, part-time city councils by definition are characterized by less staff support and fewer administrative resources (such as office budgets—or even offices) than full-time councils.<sup>184</sup> Yet the substantive responsibilities that part-time city councils must respond to with their more limited resources can be substantial. For example, even in relatively small cities, city councils are responsible for making policy decisions about a wide range of service needs, determining when and how to exercise regulatory powers to advance the public health, safety, and welfare, and managing annual budgets in the millions.<sup>185</sup> And as cities grow in population, there is a corresponding increase in the number and type of interest groups that compete for the attention and votes of council members.<sup>186</sup> The increase in interest group activity and pressures makes the lack of institutional resources associated with a part-time council particularly acute in larger cities: one empirical survey indicated that eighty percent of council members in large cities (those with over 200,000 residents), without council staff, expressed a need for more staff support, and forty-three percent of council members in large cities,

can measure the constitutional powers of governors and legislatures, their real power hinges as much on political factors and traditions as on constitutional and statutory ones.”).

<sup>184</sup> See e.g., Nancy Hicks, *City Council: Not the Perk-iest Job Around*, LINCOLN J. STAR (Feb. 4, 2013), [https://journalstar.com/news/local/govt-and-politics/city-council-not-the-perk-iest-job-around/article\\_0e14c38d-2e30-50ed-b3d6-b98545ff3fa3.html](https://journalstar.com/news/local/govt-and-politics/city-council-not-the-perk-iest-job-around/article_0e14c38d-2e30-50ed-b3d6-b98545ff3fa3.html) [https://perma.cc/RBZ5-JZLT] (“Every [part-time, Lincoln, Nebraska] council member has a tiny office in the City-County Building. But no phone. And they get no reimbursement for the cost of cellphones, which most use for city-related business. The council has one staff person who handles calls at the office and does general secretarial work. But council members have no staff to help with research.”). The same article also included the following editorial correction underscoring just how few institutional resources part-time city councils may have: “There is no money in the council budget for goodies. Every council member chips in \$20 for cookies and candy. When the money is gone they take up another collection. An original version of this story was incorrect in suggesting the cookies were free.” *Id.*

<sup>185</sup> See, e.g., Alvin D. Sokolov & Beth Walter Honadle, *How Rural Local Governments Budget: The Alternatives to Executive Preparation*, 44 PUB. ADMIN. REV. 373, 375 (1984) (presenting data on the expected expenditures of rural counties in Illinois and California); Tabori et al., *supra* note 158 (presenting a summary of the annual budget of University Park, Maryland and expenditures relating to general government, public works, and the police department); see also U.S. CENSUS BUREAU, 2016 STATE & LOCAL GOVERNMENT FINANCE HISTORICAL DATASETS AND TABLES, <https://www.census.gov/data/datasets/2016/econ/local/public-use-datasets.html> (click on US Summary & Alabama-Mississippi) [on file with *Ohio State Law Journal*] (indicating that as of 2016, local governments as a whole in the United States were responsible for \$1,805,682,720 in revenues and \$1,838,514,959 in expenditures).

<sup>186</sup> See SVARA, TWO DECADES, *supra* note 15, at 34 (noting that “council members in medium-sized cities are more like[ly] to complain about interest group pressure” and those “problems are worse as city size increases”).

where there was some existing staff support, expressed a need for more staff support.<sup>187</sup>

The limited institutional resources of part-time city councils can also affect what council members utilize those resources to do. As noted above, in addition to their policymaking duties, city council members also spend a significant amount of time providing constituent services to residents.<sup>188</sup> While the constituency services demanded of council members in a smaller city may be manageable on a part-time schedule,<sup>189</sup> in mid-sized and larger cities where the part-time model is used, a single council member may have tens of thousands of constituents in their district.<sup>190</sup> But because the institutional design of city councils often fails to adjust to changes in city population and demographics, part-time council members often still have only limited institutional resources to devote to increased constituency demands. As a result of reelection pressures, as well as obligational norms of representative office, part-time council members may be more likely to spend their limited institutional resources on constituency services rather than policymaking. For example, rather than having their single dedicated staffer gather research about a complicated budget proposal coming up for a vote, a council member may instead decide to have the staffer provide assistance to residents with various service requests.<sup>191</sup> While

<sup>187</sup> *Id.* at 1, 28, 39 (noting the “greater scale and complexity of problems as cities get larger make it harder in large cities to achieve the same level of effectiveness than is achieved in smaller cities”).

<sup>188</sup> See Bone, *supra* note 76, at 1413 (noting that studies suggest that legislators receive many requests from constituents for assistance in dealing with the government); SVARA, TWO DECADES, *supra* note 15, at 11–13 (discussing how constituent services occupy a significant amount of time spent for city council members).

<sup>189</sup> Even in smaller cities, the time commitments can be outsized. See, e.g., Chantal M. Lovell, *City Council: Job Is Part-Time, But It’s a Full-Time Commitment*, NAPA VALLEY REG. (Feb. 3, 2012), [https://napavalleyregister.com/news/local/city-council-job-is-part-time-but-it-s-a/article\\_8f9cdd8a-4e30-11e1-87c1-0019bb2963f4.html](https://napavalleyregister.com/news/local/city-council-job-is-part-time-but-it-s-a/article_8f9cdd8a-4e30-11e1-87c1-0019bb2963f4.html) [https://perma.cc/B6AJ-KUT3] (“Most part-time jobs end when employees make their final time-card punch of the day. But if that part-time job is being a member of the Napa City Council, it follows the employee home, to the grocery store, to high school sporting events. City Council members said they spend in excess of 20 hours per week on city-related business, much of which happens after hours, on weekends and in the least-suspected places.”).

<sup>190</sup> See SQUIRE & MONCRIEF, *supra* note 10, at 218 (“As populations grow, so, too, do the demands of the job.”); Zale, *supra* note 5, at 886 (“[I]t is not unusual for lawmakers of even midsize cities to be responsible for managing multimillion-dollar budgets, coordinating services for hundreds of thousands of residents, and overseeing thousands of public employees.”).

<sup>191</sup> Empirical surveys of city council members indicate that council members in cities of all sizes spend a significant amount of their time—between one-third and one-half—on constituent services, but that council members in large cities (defined in the study as having a population greater than 200,000) who have full-time outside employment (i.e., who are serving in a part-time role in city council) spend over fifty percent of their time on constituent services, leading the study’s author to suggest that “[w]hereas constituent service is the option if you have more time in smaller cities, it appears to be the expected area of emphasis



this may be a rational allocation of institutional resources from the individual council member's perspective, it can have the effect of reducing the policymaking impact of the council.

*Legislative Capacity.* Legislative capacity can be defined in a number of different ways, but at its core, it refers to the ability of a legislative institution to adequately respond to the needs and demands of constituents, to implement actions that yield their intended consequences, and to attract competent individuals to serve in office.<sup>192</sup> While the capacity of every legislature is limited to a certain extent,<sup>193</sup> the institutional design features of the part-time model impose particular constraints on the legislative capacity of city councils.

In particular, because part-time city council positions provide relatively low pay, council members either must maintain outside employment or have an independent source of wealth to support themselves.<sup>194</sup> For those part-time council members with outside employment, the result is that they are “serving

to which more scarce hours will be devoted in large cities.” SVARA, TWO DECADES, *supra* note 15, at 1, 11–12.

<sup>192</sup> See Wayne Parent & Michael B. Henderson, *The Party's Over: The Rise and Stall of Louisiana Legislative Independence*, 48 LOY. L. REV. 527, 536, 539–43 (2002) (“Capability, therefore, involves both a negative dimension, insulation from exterior influence, and a positive dimension, the means to determine and achieve legislative goals.”). Political scientists often conceptualize legislative capacity in terms of professionalism. See, e.g., James D. King, *Changes in Professionalism in U.S. State Legislatures*, 25 LEGIS. STUD. Q. 327, 329 (2000) (defining the concept of legislative professionalism as overlapping to some degree with the concept of legislative capacity and “involv[ing] the extent to which a legislature can command the full attention of its members, provide them with adequate resources to do their jobs in a manner comparable to that of other full-time political actors, and set up organizations and procedures that facilitate lawmaking”) (quoting Christopher Z. Mooney, *Citizens, Structures, and Sister States: Influences on State Legislative Professionalism*, 20 LEGIS. STUD. Q. 47 (1995)); see also Karl Kurtz, *Full- or Part-Time Legislature: Which Is Better?*, THICKET ST. LEGIS. (Feb. 14, 2013), [https://ncsl.typepad.com/the\\_thicket/2013/02/full-time-or-part-time-legislature-which-is-better.html](https://ncsl.typepad.com/the_thicket/2013/02/full-time-or-part-time-legislature-which-is-better.html) [<https://perma.cc/VT2V-4KDY>] (“The concept of legislative professionalization is designed to measure the capacity of legislatures and legislators to make policy decisions. Capacity, though, does not necessarily mean performance. A legislature with high capacity can perform poorly (Congress being an example), while legislatures with low capacity can perform at high levels.”).

<sup>193</sup> D. Roderick Kiewiet et al., *The Implications of the Study of the U.S. Congress for Comparative Legislative Research*, in LEGISLATURES: COMPARATIVE PERSPECTIVES ON REPRESENTATIVE ASSEMBLIES, *supra* note 122, at 7 (“Every legislature confronts an infinity of potential issues and policy choices but given the limits of time and labor, it can consider only a small number of proposals.”).

<sup>194</sup> See, e.g., Turner, *supra* note 9 (“There are approximately 5,700 people employed by the city of Sacramento, but only nine are elected to make decisions about the future of our region. One is the mayor. The other eight are our City Council members. Fun fact: Because they are considered part-time city employees—and paid accordingly—each of them makes less than some city plumbers and parking lot supervisors. As a result, seven of the eight council members have second jobs.”).

two masters.”<sup>195</sup> While conflict-of-interest rules can be adopted to address ethical concerns raised by this scenario, because council members’ time and attention are divided and they can only devote so many hours per week to government responsibilities, the council may be disadvantaged in terms of efficiency and effectiveness. For example, part-time councils may be hampered in their ability to effectively negotiate city contracts with private parties, which are typically represented by full-time lawyers, lobbyists, and other consultants.<sup>196</sup> Even if there are full-time city staff that provide support to part-time council members, council members must make the ultimate decision on issues. As a result, votes may be delayed, which not only slows the implementation of substantive policies that may be needed to regulate for public health, safety, and welfare,<sup>197</sup> but also can potentially result in increased costs to taxpayers.<sup>198</sup>

The low pay associated with the part-time model can also impact legislature capacity more subtly because of how it may impact the type of individuals most likely to serve and the activities those council members are likely to spend time and attention on. While the part-time model in theory allows anyone to serve, since it does not require giving up outside employment for a career position, in reality only a limited number of careers offer the flexibility needed to maintain outside employment while also serving in a part-time council position.<sup>199</sup> As a

<sup>195</sup> *Id.*

<sup>196</sup> *See, e.g.,* Ted S. McGregor, Jr., *What You Pay For*, INLANDER (Feb. 12, 2001), <https://www.inlander.com/spokane/what-you-pay-for/Content?oid=2173372> [<https://perma.cc/GY48-W8VX>] (“[T]he shortcomings of a part-time council have become most clear in issues like the Lincoln Street Bridge, which no single part-time council member could ever defuse, and the River Park Square parking garage, where, it appears, a part-time council was ground into submission by its partner (made up of full-time consultants, lawyers, etc.). This is not to say that a full-time council would have averted these and other disasters, but at least the citizenry would know that their elected officials were expected to devote their full attention to the city’s business.”).

<sup>197</sup> Particularly in growing mid-sized and larger cities, where there is more likely to be a misalignment between the numerous and complex policy issues the city council is responsible for and the constraints imposed by the part-time model on the ability of the council to effectively respond, the part-time model may result in a kind of catch-22: “It’s really irrational . . . . We don’t want to equip politicians with the resources to do their jobs, and then we blame them when things don’t work the way we want.” Thomson-DeVeaux, *supra* note 132.

<sup>198</sup> *See* McGregor, *supra* note 196 (discussing the shortcomings of part-time councils in regard to negotiating contracts with private parties).

<sup>199</sup> *See, e.g.,* Marti Mikkelsen, *Milwaukee County Board Goes Part-Time*, WUWM (Apr. 18, 2016), <https://www.wuwm.com/post/milwaukee-county-board-goes-part-time#stream/0> [<https://perma.cc/P9S7-84VT>] (“[Part-time member] Taylor still has another job and intends to keep it . . . . Taylor says she hopes the newly-reconfigured county board holds its meetings at night, so it’s easier to handle two jobs.”); *see also* SVARA, TWO DECADES, *supra* note 15, at 57 (“[A]n increasingly important question in progressively smaller cities is whether the ‘citizen-council member’ who combines regular employment with council service is being driven away from the council because of the demands of the position.”); Zale, *supra* note 5, at 885 (“Small business owners or independent contractors

result, rather than being filled with a wide swath of individuals from different careers and backgrounds, as the citizen legislature model aspires for, members of part-time councils are often heavily drawn from the business community.<sup>200</sup> While such individuals may be just as civically minded as other residents, the legislative capacity of city councils composed of such individuals may be reduced, since evidence suggests that part-time councils comprised primarily of members from the business sector tend to focus on “running government like a business,” rather than engaging in long-term planning goals and innovative policymaking.<sup>201</sup>

*Political Capital.* Finally, city councils utilizing the part-time model typically have less political capital to work with than full-time councils do. Political capital as used here refers to the extent to which lawmakers are entrusted by voters to engage in policymaking. While voters may trust individual part-time council members just as much—or just as little—as full-time ones, the part-time model shapes voters’ expectations of those who serve in the position.<sup>202</sup> For example, part-time council members who suggest that their responsibilities are closer to full-time may face political pushback to “perform the job as designed”<sup>203</sup> and be criticized for “getting up to all sorts of legislative and administrative mischief.”<sup>204</sup>

Furthermore, the diminished political capital of the part-time model can create a feedback loop that may make it more challenging to attract individuals to serve in city council. As one scholar has noted: “[A]s the real policymaking discretion of nonfederal office decreases, ambitious and civic-minded citizens

may be able to do so, but hourly and salaried employees are less likely to have the flexibility to devote the additional hours needed for a part-time council position, which may entail attending weekly midday council meetings and responding to time-sensitive constituent requests. Furthermore . . . many officially part-time city councils actually impose nearly full-time responsibilities, further limiting the pool of candidates who have outside careers that can accommodate such a schedule.” (citations omitted)).

<sup>200</sup> See Zale, *supra* note 5, at 885 (discussing how small business owners and independent contractors are more likely than hourly or salaried employees to have the necessary flexibility to serve on a part-time council).

<sup>201</sup> See Larry Terry, *El Paso: Professionalism over Politics in the Shift to Council-Manager Government*, in MORE THAN MAYOR OR MANAGER: CAMPAIGNS TO CHANGE FORM OF GOVERNMENT IN AMERICA’S LARGEST CITIES, *supra* note 15, at 230 (“The elected [part-time council] positions did not pay much. Most politicians had their own wealth, and were only interested in keeping things status quo. They ran government like a business from the basic standpoint of trying to balance the budget. There was no long-term planning approach.”).

<sup>202</sup> See Sharon Moloney, *City Council Is Blaming Shirey for Problems That It Has Caused*, CIN. POST, June 30, 1999, at 14A (describing dissatisfaction with the part-time Cincinnati city council, “which once met for a couple of hours a week, now drags meeting on for hours almost every day”).

<sup>203</sup> Joe Kirby, *Letter: City Council: ‘Perform the Job as Designed’*, ARGUS LEADER (Dec. 16, 2017), <https://www.argusleader.com/story/opinion/readers/2017/12/16/letter-city-council-perform-job-designed/108661708/> [<https://perma.cc/E9FL-X7GL>].

<sup>204</sup> See Moloney, *supra* note 202.

would abandon nonfederal politics and instead substitute other activities where their public spirit and ambition can be satisfied more fully . . . . The loss of discretion might be an especially great deterrent to local officeholding.”<sup>205</sup> While we may not want every city council member in every city to be a “public entrepreneur” engaging in innovative policymaking,<sup>206</sup> the diminished political capital associated with the part-time model means that in cases where we do want such individuals to serve, it may be more challenging to attract them.<sup>207</sup>

That part-time city councils have diminished institutional resources, legislative capacity, and political capital is in a sense baked into the institutional design of the part-time structure: these limitations are the intentional consequences of an institutional design that is often chosen precisely because of resident preferences for limited government, citizen legislators, and fiscal savings. But the impact of this institutional design choice on power dynamics in local governance has largely gone unrecognized. The next Part turns to unpacking these power dynamics.

#### B. *Where Does Power Go?*

As discussed above, a part-time city council has less power—in terms of capacity, resources, and political capital—than a full-time city council.<sup>208</sup> Where does this power go? On one hand, the diminished power of part-time city councils may mean that power goes unexercised: ordinances that are never passed, city services that are never funded, intergovernmental agreements that are never entered into. On the other hand, the diminished power of part-time city councils may mean that power gets redistributed to other institutions—states, other city officials, other units of local government, and private actors—which exercise power in ways that may diverge from how that power would have been exercised by city council. To better understand the connections between this institutional design choice and city power, Part III.B develops a taxonomy of

<sup>205</sup> Roderick M. Hills, Jr., *The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and “Dual Sovereignty” Doesn’t*, 96 MICH. L. REV. 813, 894–96, 895 n.272 (1998).

<sup>206</sup> See generally MARK SCHNEIDER ET AL., PUBLIC ENTREPRENEURS: AGENTS FOR CHANGE IN AMERICAN GOVERNMENTS (1995) (discussing how and why certain actors in local government—particularly, mayors, city managers, and individual citizens—emerge as forces of policy innovation).

<sup>207</sup> See Rob Gurwitt, *Are City Councils a Relic of the Past?*, GOVERNING STATES & LOCALITIES (Apr. 2003), <http://www.governing.com/topics/politics/Are-City-Councils-Relic-Past.html> [<https://perma.cc/2LRY-WVE6>] (“[W]hen little is expected of [city councils], because a city’s most important decisions are made elsewhere, it’s no surprise that over time the ambitions of their members shrink to take in smaller and smaller patches of turf.”). The limited discretion of city council is shaped by factors in addition to the design choice of the part-time model, such as state law limitations and the structural design of the office of mayor as a strong or weak model, which may on their own deter some civically engaged and ambitious individuals from serving. See *id.*

<sup>208</sup> See *supra* Part III.A.

how the part-time model can produce power vacuums and redistribute power to other institutional actors. It is important to note that the discussion herein is a descriptive one; the normative implications of the power vacuums and redistributions of power catalogued below will be analyzed further in Part IV.

### 1. *Power Unexercised*

As noted above, a part-time city council has fewer institutional resources and less legislative capacity and political capital than a full-time body.<sup>209</sup> It is therefore logical to expect that a part-time council will do less with its formal legal authority, even if it is equivalent to that of a full-time body. A lack of empirical data makes it challenging to come to definitive conclusions about the absence of action—for example, the fact that an ordinance is not enacted or an intergovernmental agreement is not entered into by a part-time council does not necessarily mean that it would be by a full-time one. However, a theoretical account of the circumstances, in which we might expect to see power vacuums associated with the part-time model, can be built by drawing on legal theory about the various powers and duties of city council set out in Table 1,<sup>210</sup> as well as anecdotal accounts from council members and residents reported in the media. This Part catalogues the types of circumstances in which formal power, if unexercised by city council, is unlikely to be exercised by any other actor.

*Powers Exclusively Vested in City Council.* As indicated in Table 1, many powers held by city council are powers shared to varying extents with other institutional actors.<sup>211</sup> For example, the council and the mayor are often jointly responsible for drafting a legislative agenda for the city, a policy document that lays out the city's policy goals to be advocated and lobbied for in the state legislature.<sup>212</sup> If a city council fails to exercise its power to assist in the preparation of the agenda, there is another institutional actor—the mayor's office—legally authorized to engage in this action.<sup>213</sup> Similarly, while city councils have the power to enact ordinances pursuant to their police power, state legislatures also have the power to enact state law pursuant to their police power.<sup>214</sup> While specific types of home rule and other limitations of state law—such as bans on special commissions or bans on special legislation—may limit the state legislature's ability to displace local law,<sup>215</sup> for the most part, the broad scope of state police powers and state preemptive authority means that, if it chooses to, a state legislature can both displace police powers exercised by a

<sup>209</sup> See *supra* Part III.A.

<sup>210</sup> See *supra* Table 1.

<sup>211</sup> See *id.*

<sup>212</sup> See, e.g., *Frequently Asked Questions (FAQ) About City Government*, *supra* note 102.

<sup>213</sup> See *id.*

<sup>214</sup> See *supra* Table 1; BRIFFAULT & REYNOLDS, *supra* note 41, at 327.

<sup>215</sup> BRIFFAULT & REYNOLDS, *supra* note 41, at 293–302 (describing state constitutional provisions banning special commissions and special legislation).

city council (through preemption) as well as exercise police powers left unexercised by a city council.

However, there are some powers that, if they are to be exercised at all, must be exercised by the city council itself. For example, if two or more local governments wish to enter into an intergovernmental agreement, state law typically requires an affirmative vote of the governing body of each.<sup>216</sup> Thus, if City A and County B wish to enter into an agreement for joint services (to more efficiently provide recycling or public transportation services, for example), the agreement must be approved by both the city council and the county's governing body.<sup>217</sup> If a city council does not exercise its power to enter into intergovernmental agreements, no other institutional actor is legally authorized to perform this particular function.<sup>218</sup> Similarly, if a city council is vested exclusively with the authority to create administrative commissions to advise on select policy issues and appoint members to those commissions,<sup>219</sup> then if the city council does not exercise its power to establish and appoint members to such commissions, no other institutional actor is legally authorized to do so. While the author is not aware of any comparative studies on how frequently cities with part-time councils enter into intergovernmental agreements or authorize the creation of administrative compared to full-time councils,<sup>220</sup> if a part-time council fails to act with regard to these or other types of powers which it has exclusive authority over, there will not be any other actor who can step in to take action.

<sup>216</sup> See, e.g., ARIZ. REV. STAT. ANN. § 11-952(f) (2015) (requiring “[a]ppropriate action by ordinance or resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies”).

<sup>217</sup> See *id.*

<sup>218</sup> See *id.*

<sup>219</sup> Whether council or the mayor or both are authorized to establish administrative commissions, and the type of commissions they are authorized to establish, varies by jurisdiction. The subject matters that local administrative commissions and boards may advise on is quite diverse. See, e.g., TUCSON, ARIZ. CHARTER & GEN. ORDINANCES, ch. 10A (1987), [http://library.amlegal.com/nxt/gateway.dll/Arizona/tucson\\_az/tucsonarizonacharterandgeneralordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:tucson\\_az](http://library.amlegal.com/nxt/gateway.dll/Arizona/tucson_az/tucsonarizonacharterandgeneralordinances?f=templates$fn=default.htm$3.0$vid=amlegal:tucson_az) [on file with *Ohio State Law Journal*] (describing various community affairs commissions that have been established in Tucson, Arizona, including a “Youth and Delinquency Prevention Council,” a “Commission on Disability Issues,” a “Commission on Food Security, Heritage, and Economy,” and several others); *Boards and Commissions*, CITY OF HOUSTON, TEX., <https://www.houstontx.gov/boards/> [https://perma.cc/6UT6-C45E] (describing various boards and commissions established in Houston, Texas, including a “Bicycle Advisory Committee,” a “Health Benefits Advisory Committee,” a “LGBTQ Advisory Board,” and dozens of others).

<sup>220</sup> It should be recognized that the part-time model could actually result in greater exercise of these powers, since a particular intergovernmental agreement might reduce the responsibilities of city council, and an administrative commission may help reduce the workload of council by shifting some responsibilities to commission members. Additional empirical research on this question could thus offer interesting insights.

*Political Power Versus Legislative Power.* Although not mandated by law, constituent services are an integral part of any legislator's role, whether Congressperson, state senator, or city council member.<sup>221</sup> While members of Congress typically have staff who handle most constituent service needs, for many city council members—who often have no personal staff or only a single shared staff member—providing constituent services requires a significant amount of their time.<sup>222</sup> Furthermore, data indicate council members in part-time bodies spend proportionately more of their time on constituent services than members of full-time bodies.<sup>223</sup> It is impossible to quantify precisely which legislative powers may go unexercised by a council because members are engaged in providing constituent services. However, a logical conclusion to draw from this data is that some exercises of legislative power that would otherwise occur in part-time councils do not occur because part-time council members make the rational decision to utilize their limited time, capacity, and resources to exercise more political power in the form of constituent services.

*"Small" Powers.* As noted in Part I.A, while high-profile city council policies get headlines—whether progressive ordinances like sanctuary city laws,<sup>224</sup> or conservative ones like gun ownership mandates<sup>225</sup>—many laws enacted by a typical city council are “nuts and bolts” ordinances involving seemingly mundane, but necessary, logistical and bureaucratic actions, which if left undone would risk the effective functioning of city departments and public services (and the associated voter discontent and bad press).<sup>226</sup> Other council actions that may occupy a significant amount of time and attention, but which fail to make headlines, are those required to comply with state or federal law, which the city must satisfy to avoid possible lawsuits or loss of intergovernmental funding.<sup>227</sup>

<sup>221</sup> See SVARA, TWO DECADES, *supra* note 15, at 11–12.

<sup>222</sup> See *id.*

<sup>223</sup> See *id.* (showing survey data indicating that in medium cities with part-time councils, members spend forty-three percent of their time on constituent services, compared to medium cities with full-time councils, in which members spend thirty-three percent of their time on constituent services).

<sup>224</sup> See, e.g., Martin Macias, Jr., *Los Angeles City Council Declares LA a Sanctuary City*, COURTHOUSE NEWS (Feb. 8, 2019), <https://www.courthousenews.com/los-angeles-city-council-declares-la-a-sanctuary-city/> [<https://perma.cc/U2JE-YQYH>].

<sup>225</sup> See, e.g., Nancy Lofholm, *Nucla Becomes Colorado's First and Only Town Mandating Gun Ownership*, DENV. POST (Apr. 29, 2016), <https://www.denverpost.com/2013/05/24/nucla-becomes-colorados-first-and-only-town-mandating-gun-ownership/> [<https://perma.cc/36H4-6XDM>].

<sup>226</sup> See *City Councils*, *supra* note 86 (listing a number of typical city council functions).

<sup>227</sup> See, e.g., *US Sues Mount Vernon, Alleging Clean Water Act Violations*, ASSOCIATED PRESS (June 28, 2018), <https://www.apnews.com/cef619a2b3114046a785f27a358db734> [<https://perma.cc/M5RE-ESC4>]. A federal lawsuit was filed against the city of Mount Vernon for violating the Clean Water Act by failing to comply with rules meant to stop raw sewage from polluting waterways. *Id.* The city's mayor “blamed inaction by the city council on the crisis: ‘I need the public’s help. Tell the council: “Do your job.”’ he said.” *Id.*

Because part-time councils have limited resources and capacity, it is rational for them to focus their attention on the most essential of these nuts and bolts responsibilities, and on federally or state-mandated actions. This is not to say that cities with part-time city councils fail to regulate on “small” issues: as a quick online search of local codes of ordinances will reveal, there are any number of idiosyncratic, seemingly minor aspects of local life that city councils have enacted regulations on, from requiring a permit for wearing high heels and banning hats on public property,<sup>228</sup> to highly detailed design standards found in many local land use regulations.<sup>229</sup> But with regard to these “small” exercises of power, if a city council does not act, it is unlikely that any other institutional actors will step in. While the absence of local regulation on high heels or hats is unlikely to be a cause for alarm (and in fact may be welcomed), the absence of regulation on other “small” issues, such as detail-oriented revisions to floodplain building standards or parking requirements for changing development patterns, may prove to be a regulatory vacuum that poses more serious public policy concerns.

## 2. Power Redistributed

While the diminished power of part-time city councils is likely to result in a power vacuum with respect to the types of actions discussed in Part III.B.1, for other issues—and particularly for those that are contested—the diminished power of a part-time city council may result in a redistribution of power to another institutional actor.<sup>230</sup> Part III.B.2 maps out other institutional actors to

<sup>228</sup> See CARMEL-BY-THE-SEA, CAL., MUN. CODE ch. 8.44 (2019), <https://www.codepublishing.com/CA/CarmelbytheSea/html/Carmel08/Carmel0844.html> [https://perma.cc/VA4H-X96V] (requiring a permit for heels over two inches tall); Alina Hunter-Grah, *City Council Removes Outdated Laws from City Code*, NOOGA TODAY (Oct. 31, 2018), <https://noogatoday.6amcity.com/city-council-chattanooga-old-laws/> [https://perma.cc/TY3V-7QUD] (describing a recently repealed ban on wearing hats in theatres or public places in the city of Chattanooga, Tennessee).

<sup>229</sup> See, e.g., CITY OF PORTLAND, OR., TREE & LANDSCAPING MANUAL (2017), <https://www.portlandoregon.gov/bds/article/104895> [https://perma.cc/K8FG-N4M5]; CITY OF ENCINITAS, CAL., DESIGN GUIDELINES (Apr. 2005), <http://ci.encinitas.ca.us/Portals/0/City%20Documents/Documents/Development%20Services/Planning/Land%20Development/Design%20Review%20Guidelines.pdf> [https://perma.cc/F4VV-FLUD].

<sup>230</sup> See, e.g., Nathaniel Herz, *Alaska’s Citizen Legislature Is Now Pretty Much Full-Time*, ANCHORAGE DAILY NEWS (July 9, 2016), <https://www.adn.com/politics/2016/07/09/alaskas-citizen-legislature-is-now-pretty-much-full-time/> [https://perma.cc/YK6G-SQVM].

Part-time lawmakers with less time and fewer staffers end up ceding some of their power. And “power doesn’t go away,” he said. “If you take power away from legislators, it goes to lobbyists or the administration,” said Thomas. A strong legislative branch, he added, “puts a check on a strong executive, and it enables people to look at things in depth that they wouldn’t be able to if they were making \$200 a month.”



whom power is likely to be redistributed to as a result of a part-time city council. These redistributions of power can be conceptualized along four axes: (1) vertically to the state;<sup>231</sup> (2) horizontally to other units of local government; (3) internally to other branches of city government; and (4) orthogonally to private actors.

*Vertical Redistribution of Power.* The balance of power between states and local governments, particularly cities, is one of the central concerns of local government law.<sup>232</sup> While black letter law suggests that states have the upper hand,<sup>233</sup> scholars have recognized that the actual power dynamics between states and cities are more nuanced, and that a range of background principles of state law as well as political considerations affect the power dynamics between states and cities.<sup>234</sup>

The impact of internal structures of local governments on state-local relations has received less attention, but internal institutional design decisions in cities can also affect the power relationship between cities and states.<sup>235</sup> With respect to the specific institutional design choice of a part-time city council, because such bodies have reduced capacity, resources, and political capital as discussed above, cities with part-time councils may be less likely to act in ways

*Id.* (quoting Clive Thomas, former political science professor at University of Alaska Southeast); Laura Tomaka, *In Midwest, States Split on Whether Legislating Should Be Part-Time or Full-Time*, COUNCIL ST. GOV'TS MIDWEST (July/Aug. 2014), <https://www.csgmidwest.org/policyresearch/0814-legislatures-Midwest.aspx> [<https://perma.cc/X89A-6V4D>] Political scientist Gary Moncrief stated that he has “never understood why some legislators want to weaken the legislative institution—which is certainly closer to ‘the people’ than the executive or the judicial institutions. Weakening the legislature simply makes the executive branch relatively stronger, and [] it makes interest groups relatively stronger as well.” (citation omitted). *Id.*

<sup>231</sup> The part-time model may also redistribute power vertically to the federal government, but given that the state is the intermediary in most federal-local interactions, the discussion herein focuses on vertical redistributions of power to the state.

<sup>232</sup> See *supra* Part II.A (citing some of the vast literature on the topic).

<sup>233</sup> See *supra* notes 39–41 and accompanying text.

<sup>234</sup> As noted in Part II.A, there is an inherent tension between the top-down view of state control over local governments—as represented by *Hunter v. Pittsburgh*, 207 U.S. 161 (1907) and its progeny cases, Dillon’s Rule, and state preemption—and the view of local autonomy that legal doctrines and principles, such as home rule and bans on special legislation, support. See Richard Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1865 (2010) (“[Local government law is] an oft-changing, arguably cyclical battle between political interests (often ‘reformers’ and ‘machines’) that results in a grab bag of institutional constraints, some favoring the centralization of power and some favoring the decentralization of power. Localism is forever contested.”).

<sup>235</sup> In states where the state legislature is also considered part-time, the extent of the vertical redistribution of power from the systematic prevalence of part-time local government may be diminished: while the part-time model may diminish the power of city councils, if the state legislature is also part-time, it is not as likely to be a significant recipient of that redistributed power. However, power may flow to other state actors, such as the executive branch and state administrative agencies.

that challenge—or serve as a counterweight to—state authority.<sup>236</sup> This is not to say that cities with part-time councils cannot engage in innovative policymaking or act in ways that serve as a check against the state: they can and they do.<sup>237</sup> But for the reasons discussed in Part II, a part-time city council is more likely to spend its limited resources and capacity on running the business of local government in ways that address the immediate service needs of residents.

*Horizontal Redistribution of Power.* The part-time model of city councils also may affect the horizontal distribution of power between different units of local government. In particular, cities with part-time city councils may rely more extensively on special purpose districts to provide core governmental services that would otherwise be within the city's purview.<sup>238</sup> Special purpose districts are a specialized form of local government authorized under state law to engage in discrete functions that would otherwise be the responsibility of the general purpose local government, such as a sanitation district, a flood control authority, or a hospital management district.<sup>239</sup> Special districts offer fiscal and legal advantages that may make them an appealing option regardless of the part-time or full-time status of a city council,<sup>240</sup> but it is reasonable to think that for cities with part-time councils, the transfer of authority over governmental functions to another unit of government may be particularly appealing. While this may allow the part-time council to focus its limited capacity on its remaining duties,

<sup>236</sup> While states typically can rely on their power of preemption, as well as their significant control over local fiscal capacity to rein in local governments whose policies they disagree with, states may also on occasion force changes to the internal structures of city councils with the express goal of disempowering them. See Mikkelsen, *supra* note 199. For example, in 2016 the Wisconsin state legislature initiated a referendum process to make the formerly full-time Milwaukee County Board of Supervisors part-time. See *id.*

<sup>237</sup> See, e.g., Marc Nathanson, *Armed with a New Ordinance, a Small Town in Florida Fights Back Against Hate*, ABC NEWS (May 31, 2019), <https://abcnews.go.com/US/armed-ordinance-small-town-florida-fights-back-hate/story?id=63079013> [<https://perma.cc/YA4F-XQNF>] (describing efforts by a small town in Florida, which passed a “local hate-crime ordinance in 2017 [by taking] the U.S. State Department’s 2010 guidelines on anti-Semitism and [codifying] them into a section of the village code entitled ‘Consideration of Anti-Semitism in Enforcing Laws’”).

<sup>238</sup> Power may also be redistributed horizontally to counties, which may or may not also have part-time, elected governing boards. See Note, *Impairment of Contracts by Municipalities*, 31 HARV. L. REV. 875, 880 (1918) (noting that “both legislative and administrative powers are vested in city councils and county commissioners”).

<sup>239</sup> *What Is a Special District?*, MUN. RES. & SERVS. CTR., <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and-Organization/Special-Purpose-Districts-in-Washington/What-is-a-Special-District.aspx> [<https://perma.cc/XW69-ZWNP>].

<sup>240</sup> KIMIA MAZANY & APRIL MANATT, *WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS?* 10 (3rd ed. 2002), [https://www.cameronpark.org/misc\\_pdfs/Whats\\_So\\_Special.pdf](https://www.cameronpark.org/misc_pdfs/Whats_So_Special.pdf) [<https://perma.cc/C6E5-3HFQ>] (describing various advantages of special purpose districts).

because the extent of policy issues that it controls has shrunk, the city council is also less powerful.<sup>241</sup>

*Internal Redistributions of Power.* Public administration scholars have devoted significant attention to internal power dynamics within city governments.<sup>242</sup> For example, public administration scholarship has examined how changes in the form of government (mayor-council or council-manager), type of council elections (district, at-large, or hybrid), and use of term limits affect the balance of power between different local elected officials.<sup>243</sup> However, the internal redistribution of power associated with part-time city councils has been less well-explored.

Because the internal structures of city governments vary, where power goes internally as a result of the part-time model of city councils will also vary, depending on the particular institutional design of a city government. In council-manager cities, the council holds legislative, executive, and quasi-judicial powers, and the manager is a city employee hired by the council and delegated administrative and executive authority.<sup>244</sup> While formally, the manager is ultimately responsible to the city council as an appointed employee, when the city council is part-time, the result may be that the council defers to, and is more reliant on, the city manager and the administrative staff than a full-time body would be.

In a mayor-council form of government, executive powers are held by the independently elected mayor.<sup>245</sup> The potential for power struggles between the mayor and council is built into this form of government, and the local legislature and the local executive each act as a check on the other's power.<sup>246</sup> The part-time status of a city council is thus likely to tip the balance of power in favor of the mayor, particularly if the mayor is of the strong mayor variety. In cities with both a part-time city council and a part-time mayor, the mayor is unlikely to receive a significant boost in power as a result of the part-time city council model, since as a part-time figure herself, her powers are already likely significantly constrained by the city charter or state law. Instead, power is likely to flow internally to the appointed city manager, as well as to the administrative bureaucracy of the city.

<sup>241</sup> See *id.* at 11.

<sup>242</sup> See *supra* Part II.B.

<sup>243</sup> See *id.*

<sup>244</sup> See MORE THAN MAYOR OR MANAGER, *supra* note 15, at 4, 7.

<sup>245</sup> See *id.* at 8.

<sup>246</sup> See SVARA, TWO DECADES, *supra* note 15, at 52. In mayor-council cities, there is more competition between mayors and councils with regard to "policy initiation":

[T]here may be tension with the mayor even if they [council] are largely in agreement about policy objectives . . . . [S]ince the council in the mayor-council city has a potentially adversarial relationship with the mayor whom it cannot control, it may be inclined to seek ways to expand its capacity to compete with the mayor or secure greater independence from the mayor.

*Id.*

In addition to affecting the distribution of power between the local executive (whether mayor or manager) and local legislature, the part-time model also can have implications for the power held by local boards and agencies, such as planning boards, ethics commissions, and myriad other administrative decision-making bodies. Due to its own limited resources, a part-time city council may need to rely more on such agencies, but at the same time have less capacity to oversee them.<sup>247</sup>

*Public-Private Redistributions of Power.* In addition to redistributing power to the various government actors described above, part-time city councils also can reshape the power dynamics between public and private actors. While every democratic polity is to some extent an aggregation of collective private interests, it is in cities where this intermingling of the private and public is arguably at its most potent. As Professor Richard Schragger has observed, “the city is an economic phenomenon and a legal one; an agglomeration of person, goods, and capital, as well as a political jurisdiction; a marketplace and constitutional entity.”<sup>248</sup> The very term “municipal corporation” reflects the historical origins of the city as a corporate body, which was initially treated no differently under the law than were private corporations,<sup>249</sup> and which still today often reflects private, associational values to a greater degree than other types of government.<sup>250</sup>

Part-time city councils can shift power to private interests in a number of ways. First, part-time councils may result in a shift in power to outside interests with respect to drafting local legislation because a part-time city council simply has fewer resources and less capacity to devote to the task itself.<sup>251</sup> Although

<sup>247</sup> See Tomaka, *supra* note 230 (“Michigan Rep. Amanda Price adds that the effort in her state has been fueled by groups of people ‘who believe that a full-time legislature has led to over-regulation and over-taxation of citizens in Michigan. The thought of a part-time legislature may be attractive to some in that it could save tax dollars or reduce the size of government,’ Price says. ‘However, it is important to point out that the bureaucracy would remain in place without as much oversight from elected representatives who can voice people’s concerns.’”).

<sup>248</sup> See SCHRAGGER, CITY POWER, *supra* note 157, at 6–7 (discussing the dual identity of cities: “[T]he city resists our usual distinctions between market and state, private and public, business and government . . . . It is also why we struggle with the city’s legal and political authority, for much of what a city does as a policy or legal matter enhances private wealth or detracts from it.”).

<sup>249</sup> See Joan C. Williams, *The Invention of the Municipal Corporation: A Case Study in Legal Change*, 34 AM. U. L. REV. 369, 429 (1985).

<sup>250</sup> See NANCY BURNS, THE FORMATION OF AMERICAN LOCAL GOVERNMENTS 116–17 (1995) (“[W]hen entrepreneurs solve the collective action problem (as in the creation of many cities), the result is a government that embodies two sets of values—those of the entrepreneur and those of the citizens necessary to the formation effort.”).

<sup>251</sup> See Michael B. Berkman, *Legislative Professionalism and the Demand for Groups: The Institutional Context of Interest Population Density*, 26 LEGIS. STUD. Q. 661, 665, 673 (2001) (noting that less professional state legislatures will likely be less capable of independently evaluating policy and proposing legislation, and therefore will likely rely more heavily on information provided by outside groups).

lobbyists for private industry have not traditionally been a major factor in local politics,<sup>252</sup> they have increasingly turned their attention to local governments.<sup>253</sup> For example, national anti-poverty and labor groups have engaged in a concerted nationwide effort to promote minimum living wage ordinances.<sup>254</sup> On the other end of the political spectrum, the conservative American Legislative Exchange Council (ALEC) has brought its considerable forces to bear on cities in the form of ACCE, the American City County Exchange, which connects local lawmakers with industry groups that can offer model legislation.<sup>255</sup> While one may agree or disagree with the substantive agendas of various outside lobbying groups, part-time local legislators may understandably welcome the outside lawmaking support, as it were. As one part-time city council member noted of ACCE: “[They] can act like ‘an ideal lobbyist,’ filling the void left by the lack of staff—and the ideas they might generate—at the local level.”<sup>256</sup>

The part-time model also shifts power to private actors because the very design of part-time city councils—with its low pay and permissibility of outside employment—evidences a tolerance for, and even expectation of, a certain degree of intermingling of the private and public in elected officials themselves.<sup>257</sup> For example, conflict-of-interest rules for part-time city councils regarding outside employment and interests retain a certain degree of “looseness” that might not be tolerated for full-time bodies, simply because of the need to allow for part-time legislators’ continued outside employment in light of the low salary provided for the position.<sup>258</sup>

<sup>252</sup> A notable exception is the so-called “growth machine” in urban land use and development politics. But outside of the land use context, lobbying for private industry at the local level has typically been limited: the sheer number of municipalities and the limited reach of each municipality’s jurisdiction have meant that, except in the case of major urban cities or with respect to particularly sensitive issues, it has been generally more logical for lobbyists to focus their efforts on state lawmakers.

<sup>253</sup> See, e.g., Schragger, *American Cities*, *supra* note 73, at 1227.

<sup>254</sup> See *id.* (noting such “efforts have generally been spearheaded by national labor and anti-poverty groups working as part of a larger cross-city effort to regulate using the tools of municipal government”).

<sup>255</sup> Alan Greenblatt, *ALEC Goes Local*, GOVERNING STATES & LOCALITIES (June 2014), <http://www.governing.com/topics/politics/gov-alec-goes-local.html> [<https://perma.cc/PF9P-VC4Z>].

<sup>256</sup> *Id.* (quoting Todd Grayson, a member of the Perrysburg, Ohio City Council).

<sup>257</sup> See Roderick M. Hills, Jr., *Corruption and Federalism: (When) Do Federal Criminal Prosecution Improve Non-Federal Democracy?*, 6 THEORETICAL INQUIRIES IN L. 113, 121–22 (2005) The nature of local elected office “precludes the sorts of conflict of interest rules used by the federal government. One cannot insist on the prophylactic separation of public and private motives where most decision-makers are part-time officials with extensive private interests . . . . Divestiture, or even disclosure, of private interests is rarely required by state law of lay decision-makers, perhaps because the cost of these remedies would deter what is, after all, unpaid and unglamorous service.” *Id.*

<sup>258</sup> See CTR. FOR THE ADVANCEMENT OF PUB. INTEGRITY, AN HONEST DAY’S WORK: REGULATING STATE LAWMAKERS’ OUTSIDE INCOME 1 (Sept. 2016), [https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/images/regulating\\_out](https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/images/regulating_out)

Finally, the part-time model may shift the balance of power to the private end of the spectrum because cities with part-time councils may rely more heavily on privatization of government services. While the potential cost savings of privatization may appeal to cities of all sizes, regardless of whether city council is full-time or part-time,<sup>259</sup> there is likely to be an even stronger appeal for cities that have part-time city councils.<sup>260</sup> By contracting out for private provision of services—whether information technology or towing services or water utilities—part-time city councils can focus their limited time and resources on other governmental matters. While they may still have to approve annual contracts for privatized services and set up a monitoring mechanism to oversee the outsourced services, there is no longer a city department with public employees and the myriad legal concerns associated with it demanding the council’s attention.

The framework developed in this Part offers a taxonomy of how the part-time model produces power vacuums and redistributes power. This framework is not meant to provide a mathematically precise measurement of how much

side\_income\_of\_legislative\_officers\_-\_capi\_issue\_brief\_-\_september\_2016.pdf [https://perma.cc/385H-4URQ] (discussing the challenge of developing conflict of interest rules for state legislators in light of the fact that state legislative positions “are generally low-paid and part-time” and legislators “have the right—perhaps even the need—to supplement their salaries”); Nicholas Kusnetz, *Conflicts of Interest Run Rampant in State Legislatures*, CTR. FOR PUB. INTEGRITY (Mar. 18, 2013), <https://www.publicintegrity.org/2013/03/18/12313/conflicts-interest-run-rampant-state-legislatures> [https://perma.cc/QDS7-5PWW] (discussing the widespread prevalence of conflicts of interests in part-time state legislatures, where “unless [members] are retired or wealthy, they must find another way to earn a living”).

<sup>259</sup> See, e.g., Russell Nichols, *The Pros and Cons of Privatizing Government Functions*, GOVERNING STATES & LOCALITIES (Dec. 2010), <https://www.governing.com/topics/mgmt/pros-cons-privatizing-government-functions.html> [https://perma.cc/YMV3-LZ7G] (“As former mayor of Philadelphia, Pennsylvania Gov. Ed Rendell saved \$275 million by privatizing 49 city services. Chicago has privatized more than 40 city services. Since 2005, it has generated more than \$3 billion in upfront payments from private-sector leases of city assets.”). However, it is worth emphasizing the “potential” cost savings from privatization: “For governments that forgo due diligence, choose ill-equipped contractors and fail to monitor progress, however, outsourcing deals can turn into costly disasters.” *Id.* Chicago’s privatization of parking meters, for example, has become a notorious example of privatization gone wrong. See *Chicago’s Parking Meter Deal a Lesson in ‘Worst Practices’*, BETTER GOV’T ASS’N, <https://www.bettergov.org/news/chicagos-parking-meter-deal-a-lesson-in-worst-practices/> [https://perma.cc/NT4F-R58T] (describing various problems created by Chicago’s privatization of parking meters).

<sup>260</sup> While the author is not aware of any empirical studies on the correlation of privatization with part-time city councils, empirical data on privatization and small municipalities provide indirect support for this claim. Empirical data on privatization indicate the municipalities most likely to privatize services are smaller municipalities. See, e.g., Yolanda K. Kodrzycki, *Privatization of Local Public Services: Lessons for New England*, NEW ENG. ECON. REV. 31, 35 (May/June 1994). Further, as noted above, the part-time model, while prevalent across cities of all sizes, is particularly likely to be utilized in smaller cities. See *supra* Part I.

power is unexercised versus redistributed as a result of the part-time model, nor does it capture the full extent of real-world variables that might affect when power is more likely to shift from a city council to the state versus another unit of local government or private actors. But it does offer an analytical tool to clarify and refine our intuitions about the connections between local government structures and the power of government institutions. The next Part further develops this framework by analyzing the normative implications of these power dynamics.

#### IV. INSTITUTIONAL DESIGN AND CITY POWER

The framework developed in the previous Part mapped out how the part-time model reduces the effective power of city councils, and how it can both produce power vacuums and redistribute power to other institutions. Once these power dynamics are recognized, a further normative question presents itself: Is the part-time model a problem? On one hand, power unexercised by a part-time city council may be desirable if there is a lack of institutional competence or a risk of city council actions that impose externalities. On the other hand, a power vacuum may be more problematic if welfare-enhancing opportunities are lost and no other institutional actor is likely to address the issue. Similarly, redistributions of power away from city councils to other institutional actors may be appropriate if those other actors have greater institutional competence or can better balance the competing needs of city residents and other parties affected by a particular exercise of power, but may raise countervailing concerns about decisions being made by institutions that are less accountable to city residents.

The challenge is translating these abstract concerns into an analytical tool to assess the normative desirability of part-time city councils. This Part suggests that one way to do so is to think about the factors that lend legitimacy to city councils as decision-makers, as well as considerations that cut against the entity's institutional legitimacy. Part IV.A proposes a set of normative guideposts that can help us assess the power of city councils, by unpacking factors that enhance or detract from a city council's institutional legitimacy. Part IV.B applies these guideposts to assess the normative desirability of the part-time model in different types of cities and reflects on other lessons that emerge from this Article's analysis.

##### *A. Assessing City Councils as Decision-Makers*

Determining whether the power dynamics associated with the part-time model are normatively desirable requires grappling with the question of how much power a city council should have. There are no simple answers to this question. It depends in part on one's view of the role of city councils: Are they more likely to be sites of small-scale civic engagement and valuable laboratories of democracy, or sources of unnecessary layers of government regulation, prone

to policymaking that imposes spillovers and undercuts statewide uniformity concerns? It also depends on one's view of council members: Are they uniquely well-positioned to act on matters of local import, or are they likely to be well-intentioned but underqualified, drawn from a limited pool of candidates, with conflicts of interest due to outside employment?

The question of how much power a city council should have—and how institutional design can be used to calibrate council's power—is further complicated because of the multi-dimensional power dynamics at play in city governance, from state-local to intra-local to inter-local and public-private. As a result, there invariably will be tensions in how much power we want city councils to have.<sup>261</sup> For example, a less powerful city council might mitigate concerns we might have about city power in one context or with respect to one other institutional actor, but aggravate concerns we might have about lack of city power in another context or with respect to another institutional actor.

While further empirical study might prove fruitful for investigating possible correlations between metrics of power and specific characteristics of cities—for example, cities of at least W population, with X form of government, and Y type of city councils produce Z% more welfare-enhancing policies than other types of cities—we are unlikely to be able to reduce questions of city council power to a simple formula. However, there are other metrics we can draw on to inform institutional design decisions about city government. In this Part, I suggest that by thinking more deeply about factors that lend legitimacy to city councils as decision-making entities, as well as factors that cut against their legitimacy, we can develop a set of normative guideposts about the values served by city councils as decision-makers, which can in turn be used to judge the extent to which different institutional design arrangements, such as the part-time model, serve those values.

### 1. *Legitimacy-Enhancing Features of City Councils*

*Representation of Diversity of Interests.* Unlike executive officials who act as individuals, legislatures act collectively: when a legislature enacts policy—whether through the passage of individual laws, the approval of a budget, or the creation of an administration agency—it is the result of the collective decision-making of all members of that body.<sup>262</sup> While collective decision-making has

<sup>261</sup> See YATES, *supra* note 27, at 34–36 (discussing the multi-dimensional nature of city governance as “street-fighting pluralism,” which he defines as a “pattern of unstructured, multilateral conflict in which many different combatants fight continuously with one another in a very great number of permutations and combinations”).

<sup>262</sup> See SQUIRE & MONCRIEF, *supra* note 10, at 169 (discussing the representational role of state legislators). This statement obviously oversimplifies the actual practice of lawmaking in legislatures, which is shaped by internal procedural rules, committees, coalition building, logrolling, and other dynamics that have the result of making laws enacted by legislatures and *not* the result of collective decision-making by all members of the legislature. The general statement is used here simply to make a comparative point about the



its drawbacks—it can be slow-moving and prone to deadlock, and the compromises that emerge may be unsatisfying—its great advantage is the ability for a diversity of interests to be represented. City councils are “the one institution designed to serve as the collective voice of residents and communities” in cities.<sup>263</sup> Members of councils represent different interests across the entire city; particularly when members are elected by a district or in a hybrid system, they can give voice to the competing concerns of neighborhoods or particular groups.<sup>264</sup> Vesting city councils with relatively more power as decision-makers ideally produces local policies that benefit the city as a whole, but that must also take into account the needs of different neighborhoods and competing preferences of different groups.<sup>265</sup> The risk of such a model, of course, is deadlock over compromise or deference to the preferences of a particular neighborhood or interest group over the needs of the city as a whole.<sup>266</sup> In contrast, if other decision-makers have more power—such as the mayor—they can offer a single unifying voice representing citywide interests, but potentially at the cost of representation of a diversity of sub-local interests.<sup>267</sup>

*Democratic Accountability.* Unlike many of the other institutions that might make decisions about city policy—such as city managers, appointed boards and commissions, governing bodies of special districts, and private actors—city councils are directly accountable to voters. Thus, vesting relatively more power in city councils, as compared to these other actors, provides voters with an

how the structure of city councils, as compared with other decision-makers, allows for a representation of diversity of interests.

<sup>263</sup> See Gurwitt, *supra* note 207.

<sup>264</sup> See MacManus, *supra* note 15, at 169 (“Proponents of mixed systems promote them precisely because they retain some council members who bring a citywide perspective to matters before the council but allow other councilors to represent more narrow neighborhood or group perspectives.”). The size of city councils also affects the extent to which diversity of interests are represented and how effectively they are represented in terms of number of constituents per members. See *City Councils*, *supra* note 86 (“While the number of councilmen is proportional to the population of the municipality, there is no national standard of proportion. In addition, the size of a council may reflect the complexity of services provided, the council’s workload, the diversity and size of the population, the political dynamics and preferences of the city.”). City council sizes range widely (from five to fifty-one), as do ratios of constituents per member. See *id.*

<sup>265</sup> See MacManus, *supra* note 15, at 166 (noting that city councils have evolved from “homogeneous, consensual, part-time and deferential to mayors and city managers” to “more diverse, conflictual, and even more defiant of chief executives”); Svara, *Embattled Mayors*, *supra* note 27, at 155 (finding that “council members are more diverse in their characteristics, more activist in their orientation”).

<sup>266</sup> See MORE THAN MAYOR OR MANAGER, *supra* note 15, at 14 (noting critiques of the council-manager form of government are that “city council is prone to dissension; no one can overcome dissension on the city council,” and that there are “too many masters [which] brings diffusion of power, accountability”).

<sup>267</sup> See *id.*

institution to hold accountable for policymaking successes or failures in the next election.<sup>268</sup>

*Local Autonomy.* The more power held by city councils, particularly vis-à-vis the state, the more local autonomy is enhanced, since policies reflecting the needs and preferences of local residents are more likely to be enacted.<sup>269</sup> Whether we want cities to have more autonomy, of course, is a highly contested question, as evidenced by extensive scholarly debates over the scope of home rule, preemption, and other state-local conflicts.<sup>270</sup> But particularly where the needs or preferences of city residents differ from those of residents statewide and do not adversely impact disadvantaged groups, and where there are limited spillover effects of local variation in policymaking, local autonomy would seem to be value worth preserving. Furthermore, while high-profile local activism such as sanctuary city policies garner headlines,<sup>271</sup> more often than not, city councils enact policy not to intentionally challenge state or federal state law, but to fill in gaps left by the inaction of higher levels of government. For example, the city council of Laredo, Texas, did not pass an ordinance to ban single-use plastic bags because it was looking for a fight with the state legislatures, but because littered plastic bags were clogging stormwater drains, imposing costs on local residents, and no other level of government was taking action on the issue.<sup>272</sup>

## 2. Legitimacy-Diminishing Features of City Councils

*Efficiency.* The flip side of the accountability and representativeness of any legislative body is a loss of efficiency: when decisions must be made

<sup>268</sup> See Anne Mette Kjaer, *Governance and the Urban Bureaucracy*, in THEORIES OF URBAN POLITICS, *supra* note 29, at 143 (“[I]dentifying power becomes more complex and therefore, holding the exercises of power responsible through institutions of public accountability is rendered more of a challenge.”).

<sup>269</sup> See SVARA, TWO DECADES, *supra* note 15, at 29–30.

<sup>270</sup> The literature on this topic is vast. See, e.g., Nestor Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 958 (2019). Mr. Davidson summarized the basic problem of local autonomy eloquently: “After all, as much as local governments can advance economic fairness, social justice, and policy innovation, they can—and often do—use their power as a tool of exclusion, reinforcing racial and socioeconomic inequality. This is the double-edged sword of localism: local empowerment can be used for desirable as well as pernicious ends.” *Id.*

<sup>271</sup> See, e.g., Macias, *supra* note 224.

<sup>272</sup> See Chuck Lindell, *Cities Can’t Ban Plastic Bags, Rules Texas Supreme Court*, GOVERNING STATES & LOCALITIES (June 26, 2018), <https://www.governing.com/topics/transportation-infrastructure/tns-plastic-bag-ban-texas-supreme-court.html> [<https://perma.cc/JV69-F6CA>] (“[C]ity officials . . . argued that bag bans are essential to managing litter—a goal that protects animals, saves cleanup costs and limits damage to clogged sewers and drains.”).

collectively, it almost invariably takes longer to reach agreement.<sup>273</sup> The loss of efficiency not only means that decisions may take longer to make, but also that the decision-making process may end up being more expensive and contentious.<sup>274</sup> Vesting power in alternative institutions, whether a local executive who does not face the challenge of collective decision-making or a special purpose government with an appointed board not directly accountable to voters, can make for more streamlined and efficient decision-making.

*Need for Expertise.* Individuals elected to city council are almost always generalists with regard to the responsibilities of their role as council members.<sup>275</sup> Individual members may have particular expertise from their own education or employment that they can draw on with regard to some issues that come before them; for example, a small business owner serving on city council may have particular insights regarding business licensing programs, and a lawyer may be able to contribute specialized knowledge with regard to a range of legal issues. However, council members are not specialists in the sense that career employees in the city planning department or sanitation department are with regard to the responsibilities of their jobs, nor in the sense of being trained professionals in the management of government, which most city managers are.<sup>276</sup> And unlike the leadership of special districts, which focus on a single or limited set of government activities, such as flood control or fire protection, members of city councils deal with a range of service-related and policy concerns, from planning to infrastructure to economic development to coordination with federal and state governments on a multitude of issues.<sup>277</sup> Thus, if we want decisions to be made by institutions that have specific types of expertise on particular issues, then arguably city councils are less well-positioned to do so than other actors, such as professional staff or appointed administrative bodies.<sup>278</sup>

*Tendency Towards Fragmentation.* While a more powerful city council promotes the value of local autonomy, it also creates a greater risk that the council will exercise that power in ways that may have spillover effects on those outside the city's boundaries. Metropolitan regions are often made up of dozens—or even hundreds—of individual municipalities, which each have a

<sup>273</sup> See Crystal Lombardo, *17 Advantages and Disadvantages of Group Decision Making*, FUTURE WORKING, <https://futureofworking.com/5-advantages-and-disadvantages-of-group-decision-making/> [<https://perma.cc/K6MY-ZYSV>].

<sup>274</sup> See *id.*

<sup>275</sup> See generally SVARA, *TWO DECADES*, *supra* note 15.

<sup>276</sup> See *Local Government Management: A Career Overview*, ICMA, <https://icma.org/local-government-management-career-overview> [<https://perma.cc/4KLY-Z3X5>] (indicating that two-thirds of city, town, and county managers have an MPA or other advanced degree).

<sup>277</sup> See *City Councils*, *supra* note 86.

<sup>278</sup> In an informal discussion with the author, one municipal lawyer said “[t]hank God” for special districts, suggesting that if all of the governing duties that special districts are responsible for were left to part-time city councils, the results would be troubling, to say the least.

local legislative body vested with similar formal legal authority under state law to engage in the provision of services and police power regulations. The spillover problems that result from this fragmented decision-making have been the subject of extensive scholarly interest, particularly in the context of land use.<sup>279</sup> While the problem of metropolitan fragmentation is the result of far more powerful forces than just the institutional design of local legislatures,<sup>280</sup> the well-documented tendency of city councils to make and engage in policymaking with minimal regard to the impacts of those decisions on neighboring communities or the region as a whole cuts against their legitimacy as decision-makers.<sup>281</sup>

*Electoral Disinterest.* Numerous scholarly accounts and empirical studies have documented consistent patterns showing both a lack of competition and low turnout in local government elections.<sup>282</sup> In light of this situation, where council seats are often uncontested and electoral turnout is in the single digits, the legitimacy of council as a representative democratic institution and the accountability of elected officials may be called into question.<sup>283</sup> Other institutional actors that attract more civic engagement, such as mayors, may have a better claim to representative legitimacy and thus may be a preferable situs of institutional power.<sup>284</sup>

<sup>279</sup> See STERK ET AL., *supra* note 172, at 725–27, 734–38.

<sup>280</sup> An enormous amount of literature discusses the problem of metropolitan fragmentation and spillover effects of local decision-making. *Id.* at 737 (cataloguing some of this literature).

<sup>281</sup> See OLIVER, *supra* note 150, at 211 (“[C]urrent arrangements and legal standing give almost supreme power to municipalities and set them in dysfunctional competition with each other. The structure of local government law basically treats municipalities as isolated actors and gives them few incentives to cooperate with each other.”).

<sup>282</sup> See, e.g., David Schleicher, *Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law*, 23 J.L. & POL. 419, 419–24 (2007) (citing data on the lack of competition in city council elections and suggesting that the lack of competition may in part be the result of lack of partisan signals in many local elections).

<sup>283</sup> See *id.* at 468 (“Mayoral elections, especially those in big cities, produce the type of electoral froth—news media coverage, campaign spending—that can help voters overcome the informational problems they face as a result of not having an accurate party heuristic. City councils do not. As such, to the extent that cities are making decisions about the allocation of political power between a local legislature and a local executive, and care about the extent to which officials are representative of the views of locals, they should grant more power to mayors, and less to councils.”).

<sup>284</sup> See *id.*; see also KAUFMANN, *supra* note 71, at 13 (“Because the mayor is generally the most visible local official, mayoral elections are typically more salient than other forms of local elections.”); U.S. VOTE FOUND., *FIXING THE PROBLEM OF LOW VOTER TURNOUT IN US LOCAL ELECTIONS: A DATA-DRIVEN SOLUTION* 8 (2017), [https://www.usvote.foundation.org/sites/default/files/US\\_Vote\\_LOCElections\\_Whitepaper.pdf](https://www.usvote.foundation.org/sites/default/files/US_Vote_LOCElections_Whitepaper.pdf) [https://www.usvote.foundation.org/sites/default/files/US\\_Vote\\_LOCElections\\_Whitepaper.pdf](https://www.usvote.foundation.org/sites/default/files/US_Vote_LOCElections_Whitepaper.pdf) [https://perma.cc/WM5P-6YKR] (“Different forms of local governance can also elicit different levels of turnout. Prof. [Neil] Caren’s [University of Michigan professor] research has shown that elections for city council that appoint a council manager as the chief executive

By unpacking the factors that lend legitimacy to city councils as decision-makers, as well as considerations that cut against their legitimacy, this Part offers a set of normative guideposts for thinking about local legislative power. It should be acknowledged that this is an abstract and highly simplified account that intentionally omits a range of broader considerations about local governance. For example, the same factors that enhance the legitimacy of city councils may also enhance the legitimacy of other institutional actors: democratic accountability can be effectuated not only by a full-time city council, but also through other elected officials, such as mayors and state lawmakers. And there are other institutional design features, such as the status of the mayor as a strong mayor or weak mayor, or whether a council-manager or mayor-council form of government is used, as well as idiosyncratic factors—such as the personalities of those serving in office and the political environment in which they are operating—that can affect the legitimacy of city councils as decision-makers.

But by excluding other variables, this framework allows us to more clearly recognize a set of normative criteria by which to judge the part-time model. If we want to prioritize efficiency and expertise, and to provide a check against metropolitan fragmentation and electoral disinterest, then a part-time city council would seem to be a rational institutional design choice: the fact that power may be unexercised by a part-time council or redistributed to other institutional actors who better serve these values is a normatively desirable outcome. Conversely, if we are more concerned with local decision-making reflecting values of democratic accountability, representing a diversity of interests, and enhancing local autonomy, then a part-time city council is more problematic, since it may result in a power vacuum and redistribution of power away from the very institution that can effectuate those values. The next Part considers the implications of this analysis.

### *B. Implications of the Analysis*

The framework developed in the preceding discussion provides a valuable theoretical account of how the internal structures of city councils affect the distribution of power in governance systems. But the framework also has practical import. Part III.2.A reflects on the implications of this Article's analysis and suggests that three key insights emerge.

First, applying this Article's framework allows us to respond to the question posed at the outset: Is part-time government in cities a problem? The answer, as it is so often in the legal context, is it depends. In particular, it depends on what type of city we are talking about. For the majority of cities—which, as noted in Part I.A, are small, homogeneous places that most would refer to as a suburb or small town—applying the normative guideposts above suggests that the part-

of the city tend to have a 7.5 percent lower turnout than cities with a 'strong mayor' form of government.”).

time model is in fact an appropriate institutional design choice. By redistributing power away from city councils in these types of cities, the part-time model provides a check on spillover effects associated with excessive municipal fragmentation, which is one of the more vexing problems facing metropolitan regions today.<sup>285</sup> While it does so at the cost of sacrificing local autonomy that might be served by a more powerful full-time city council, local autonomy is not an unmitigated good. Experience has shown that local autonomy, particularly local autonomy of small, homogenous municipalities, is often exercised in an exclusionary fashion that imposes externalities on neighboring cities or the region as a whole.<sup>286</sup> One need only look at the seemingly intractable problem of affordable housing to see how incremental decision-making by elected leaders of small, autonomous municipalities can lead to a significant policy problem.<sup>287</sup> Particularly because state law typically grants equivalent formal legal powers to cities of the same class, regardless of whether they have a thousand or hundreds of thousands of residents,<sup>288</sup> institutional design arrangements like a part-time city council may thus indirectly mitigate the effects of fragmentation. In the land use context, for example, the NIMBYism (Not In My Backyard) of Mt. Laurel in the 1980s,<sup>289</sup> or affluent suburbs of

<sup>285</sup> See, e.g., Wayne Batchis, *Urban Sprawl and the Constitution: Education Inequity as an Impetus to Low Density Living*, 42 URB. LAW. 95, 98 (2010) (discussing the impact of municipal fragmentation on educational inequity); Kellen Zale, *Local Government Formation and Boundary Change in Texas: A Post-Harvey Assessment*, 8 HLRE: OFF REC. 105, 118 (2018) (discussing the impact of municipal fragmentation on regional flood mitigation efforts); Emily Badger, *What Happens When a Metropolitan Area Has Too Many Governments*, WASH. POST (Feb. 18, 2015), [https://www.washingtonpost.com/news/wonk/wp/2015/02/18/what-happens-when-a-metropolitan-area-has-way-too-many-governments/?noredirect=on&utm\\_term=.58bebd2937df](https://www.washingtonpost.com/news/wonk/wp/2015/02/18/what-happens-when-a-metropolitan-area-has-way-too-many-governments/?noredirect=on&utm_term=.58bebd2937df) [https://perma.cc/5TUW-UWWE] (discussing the connections between the policing problems in St. Louis and the events of Ferguson and the metropolitan fragmentation of the region).

<sup>286</sup> See STERK ET AL., *supra* note 172, at 727–37 (discussing cases involving this problem in the land use context).

<sup>287</sup> See, e.g., *Associated Home Builders of the Greater Eastbay, Inc. v. Livermore*, 557 P.2d 473, 494 (Cal. 1976) (Mosk, J., dissenting) (“[M]ay [the city of] Livermore build a Chinese Wall to insulate itself from growth problems today? And if Livermore may do so, why not every municipality in Alameda County and all other counties in Northern California?”).

<sup>288</sup> As discussed in Part II.A, state law often distinguishes between home rule and non-home rule cities, with the former typically having more extensive legal authority than the latter. See *supra* Part II.A. State law also often creates classes of cities by population or geographic size, and may allot differing legal authority to cities of different classes. See *City and Town Classification*, MRSC, <http://mrsc.org/getdoc/9ffdd05f-965a-4737-b421-ac4f8749b721/City-and-Town-Classification-Overview.aspx> [https://perma.cc/839J-LXLQ].

<sup>289</sup> See *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel I), 336 A.2d 713 (N.J. 1975); *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel II) 456 A.2d 390, 415 (N.J. 1983) (holding that municipalities must use their zoning powers to provide low- and moderate-income residents with a realistic opportunity to afford housing).

Northern California today,<sup>290</sup> might have been worse if those cities had full-time city councils intent on exercising their power to restrict affordable housing.

Furthermore, although the part-time model sacrifices to a certain degree values of democratic accountability and representation of diverse interests, the positive features of many cities make these values less salient. As noted above, most cities are small places, and most small places are internally homogeneous in terms of demographics and socioeconomic characteristics of residents.<sup>291</sup> Contrary to the image of a city as a major urban center with large and diverse populations and interests groups, many cities in fact look much more like a private association.<sup>292</sup> And that is often the precise goal of municipal incorporation: to produce a shift in power that serves private interests, while at the same time gaining the designation of municipal corporation and the formal legal powers granted to such entities under state law.<sup>293</sup> As the political scientist Eric Oliver has noted: “By creating affluent, homogeneous communities that are politically separated from the larger and more diverse metropolitan economy, affluent suburban municipalities effectively distance their residents from the problems and conflicts of the greater economy on which they depend.”<sup>294</sup> While not every small, homogenous city is intent on passing exclusionary zoning ordinances,<sup>295</sup> in light of the more private-facing, associational nature of many

<sup>290</sup> See, e.g., Marisa Kendall, *State Threatens to Sue Cupertino over Housing Policy*, MERCURY NEWS (Aug. 5, 2019), [https://www.mercurynews.com/2019/08/05/state-threatens-to-sue-cupertino-over-housing-policy/?utm\\_campaign=SDU&utm\\_source=hs\\_email&utm\\_medium=email&utm\\_content=75519178&\\_hsenc=p2ANqtz--1X4bXUIesV7XaJlkvd1FTigPEszx9sH3Qrt\\_6D4-piLgF4WIIyU86a7ZN30nSrCbr3P1L33td2D-Pt6\\_wj2uFStZvQ&\\_hsmi=75519178](https://www.mercurynews.com/2019/08/05/state-threatens-to-sue-cupertino-over-housing-policy/?utm_campaign=SDU&utm_source=hs_email&utm_medium=email&utm_content=75519178&_hsenc=p2ANqtz--1X4bXUIesV7XaJlkvd1FTigPEszx9sH3Qrt_6D4-piLgF4WIIyU86a7ZN30nSrCbr3P1L33td2D-Pt6_wj2uFStZvQ&_hsmi=75519178) [https://perma.cc/HCS7-7RDG] (describing a potential lawsuit by the state of California against Cupertino, which is “often criticized by activists over a perceived reluctance to build homes,” to satisfy its housing obligations under state law); Kristen Sze & Jennifer Olney, *Bay Area Housing Crisis: Many Bay Area Small Towns Caught Between Pro-Housing Advocates and Residents Who Do Not Want Change*, ABC 7 NEWS (Aug. 6, 2019), <https://abc7news.com/society/bay-area-towns-caught-between-pro-housing-advocates-residents-against-change/5438316/> [https://perma.cc/H57T-Z8P4] (reporting on the Bay Area housing crisis).

<sup>291</sup> See OLIVER, *supra* note 150, at 84 (“Communities with internally homogenous political desires have little need for high levels of civic activity because their residents’ preferences are so easily represented . . . . Any citizen can easily speak for the whole, and citizen concerns can be represented by the most minimal of civic actions.”).

<sup>292</sup> See *id.*

<sup>293</sup> See BURNS, *supra* note 250, at 5 (noting that the process of creating local governments is a political one that is “time consuming, prone to failure, and expensive,” that “only certain individuals and certain kinds of groups will have the interest and resources necessary to succeed in these formation efforts,” and that when new cities are incorporated, the values embedded in the new institutions tend to be exclusionary instead of participatory).

<sup>294</sup> See OLIVER, *supra* note 150, at 96.

<sup>295</sup> The city councils (and citizens) of some small, relatively homogenous municipalities in fact have been at the forefront of enacting innovative and progressive local ordinances. See generally SCHNEIDER ET AL., *supra* note 206.

such cities, the fact that their part-time city councils result in power going unexercised may be an indirect benefit of the part-time model.<sup>296</sup>

However, a second insight of this Article's framework is that for a limited subset of cities—particularly mid-sized and larger cities that have experienced population growth and changing demographics, and an associated greater number and complexity of policy problems for lawmakers to respond to, but whose internal governance structures have remained unchanged—a part-time city council is more problematic. In these types of cities, there is more likely to be a significant diversity of interests that a part-time council may be under-equipped to serve: “The problems large cities face tend to be more complex, more interrelated, and more difficult to handle. As a consequence of these conditions, the political environment of the large city is highly charged.”<sup>297</sup> There is not only a wider range of interests in large cities, but also a greater capacity of interest groups to form and organize, in part due to higher levels of media attention on city government in these cities.<sup>298</sup>

Particularly when a city council is part-time and the mayor is full-time, there may be internal redistributions of power that diminish the extent that diverse constituent interests are taken into account in city decision-making. In such situations, the mayor—who is electorally accountable to the entire population of the city—is more likely to focus on acting in the economic interests of the city as a whole, rather than the interests of neighborhoods or constituencies whose priorities diverge from city-wide ones.<sup>299</sup> Although in theory, welfare-maximizing outcomes should result, in practice, it may mean certain groups or neighborhoods are systematically disadvantaged.<sup>300</sup> While moving from a less

<sup>296</sup>The nearly inevitable commingling of public and private interests is heightened in these types of cities because of the limited pool of candidates (due to the smaller population) and the need for conflict of interest rules that are flexible enough to allow council members to serve (and vote) while retaining outside employment. Such heightened commingling also favors the diminished power of a part-time city council. *See Fasano v. Bd. of Cty. Comm'rs*, 507 P.2d 23, 26 (Or. 1973) (“Local and small decision groups are simply not the equivalent in all respects of state and national legislatures.”).

<sup>297</sup>MORE THAN MAYOR OR MANAGER, *supra* note 15, at 9 (“Large cities do not necessarily provide a broader range of functions than smaller cities, but they certainly take on a wider array of activities and are more likely to introduce innovations that may prove to be controversial.”).

<sup>298</sup>*See id.* at 8–9.

<sup>299</sup>Some scholars have also suggested that concentrating more power in the mayor may result in less progressive legislation being passed because of the fact most mayors have an outsized interest in maintaining a “pro-business” climate. *See Jacob Alderdice, Impeding Local Laboratories: Obstacles to Urban Policy Diffusion in Local Government Law*, 7 HARV. L. & POL'Y REV. 459, 468 (2013) (“The modern strength of the mayoralty has produced some extremes in blocking council legislation, and New York City Mayor Michael Bloomberg, as perhaps the representative of the modern strong mayor, is at the forefront.”).

<sup>300</sup>*See* McGregor, *supra* note 196 (“Perhaps in the 1960s and '70s, when Spokane was a less complicated place with challenges that had simpler solutions, part-time council members were more than enough. But today, in a city that is swimming upstream against just about every issue it faces . . . Spokane clearly needs all the help it can get.”).



powerful, part-time council to a more powerful, full-time council could tip the scale too far in the other direction (by overemphasizing neighborhood-specific interests at a cost to interests of the city as a whole), other institutional design levers—such as a strong mayor system, elimination of aldermanic prerogative,<sup>301</sup> and use of mixed at-large and ward-based council seats—can be utilized to guard against such concerns.

The continued use of the part-time model in mid-sized and larger cities also potentially undercuts the value of local autonomy in ways that are not offset by the check on spillover effects. Both large and small municipalities may use their legal authority in ways that impose negative externalities on neighboring communities or the region at large—particularly in the context of fiscal zoning and exclusionary housing policies. However, larger cities, while not immune from imposing negative externalities on their neighbors, also have a track record of using their legal authority in ways that create positive externalities that benefit neighboring communities, such as public transportation services that ease congestion throughout the region, or minimum wage laws that make it possible for lower income workers to afford to stay in the community and provide services that neighboring areas rely on. While some mid-sized and larger cities with part-time councils have enacted innovative, positive externality-producing policies, the fact that they have done so with a part-time council begs the question of how much more they could do were the council full-time.

Identifying which of the eleven out of every twelve cities currently utilizing the part-time model are most likely to suffer adverse distributional impacts from power unexercised or redistributed is an endeavor for future scholarship. But this Article's analysis demonstrates that for some significant number of mid-sized and larger cities, with internal governance structures that have remained unchanged for decades and that are misaligned to their current needs due to population growth and demographic changes, the power dynamics associated with the part-time model are problematic.<sup>302</sup> This is not to say that considerations about the redistributions of power associated with the part-time model should be the only factor taken into account in debates about institutional design reforms: the city's fiscal health, competing policy preferences of residents, and consideration of other institutional design levers—such as form of government and strong mayor versus weak mayor status—are likely to dominate discussions in cities that are considering a shift from the part-time to

<sup>301</sup> The term “aldermanic privilege” refers to the power of city council members to initiate or block legislation specifically concerning their own wards, associated most significantly with Chicago. See Christopher Thale, *Aldermanic Privilege*, ENCYCLOPEDIA CHI., <http://www.encyclopedia.chicagohistory.org/pages/2197.html> [<https://perma.cc/XJB7-S64W>].

<sup>302</sup> See MORE THAN MAYOR OR MANAGER, *supra* note 15, at 9 (explaining that “growth itself generates conflict and questions about purpose and direction of the city” and “may produce a demand for change not just in the occupants of public office but also in the structure of those offices”).

full-time model.<sup>303</sup> But recognizing the adverse effects of the power dynamics of the part-time model may change the calculus about the continued desirability of the part-time model as an institutional design choice in some cities.<sup>304</sup>

Finally, the analysis herein contributes to—and complicates—ongoing scholarly debate about state-local relations. In light of the growing volume and punitive nature of state preemption of local government actions over the past decade, a number of scholars have explored possible legal and political reforms that might respond to the increasingly aggressive posture of states towards cities.<sup>305</sup> Assuming one agrees with these proposed reforms, the analysis herein suggests that we need to be mindful about whether the internal structures of cities as currently configured allow for them to meaningfully engage in such efforts. While cities with robust internal governance structures—such as those with a full-time city council or a strong mayor or both—may have the organizational architecture to support the development of legal or policy tools to respond to state preemption, the institutional design arrangements in other cities may limit their capacity to fully engage in these efforts.<sup>306</sup>

<sup>303</sup> See Hibbing, *supra* note 122, at 40 (noting that even if all subjective disagreements disappeared and everyone agreed a more institutionalized legislative entity were desirable, “If the constitutional arrangements and general tenor of a society are not conducive to legislative institutionalization, it should not be forced onto a system . . . . [S]ince a[n] overly ‘viable’ legislature in a system not equipped to handle one may be a bad prescription.”).

<sup>304</sup> However, it is worth emphasizing that simply making structural changes won’t necessarily make the people that fill particular elected roles “better” or make government work “better.” See Ehrenhalt, *supra* note 57 (“In a great many cities, ‘reform’ is always going to consist of whatever system hasn’t been tried there lately. ‘What you really need,’ says Terrell Blodgett, an eminent public administration scholar and an adviser to El Paso, ‘is a strong mayor, a strong council and a strong city manager. But that’s easier said than done.’”); see also MORE THAN MAYOR OR MANAGER, *supra* note 15, at 305 (“[S]hortcomings in city government lead some to want a change from whatever form they’ve got to a different structure.”).

<sup>305</sup> See, e.g., Schragger, *American Cities*, *supra* note 73, at 1216–32 (discussing legal and political options available to cities in responding to state-local conflicts); Sarah Swan, *Plaintiff Cities*, 71 VAND. L. REV. 1227, 1233 (2018) (discussing the value of plaintiff cities as “establishing themselves as entities responsible for and capable of achieving justice for their populations”); Nadav Shoked, *Cities Taxing New Sins: The Judicial Embrace of Local Excise Taxation*, 79 OHIO ST. L.J. 801, 805 (2018) (“Excise taxes are a potent tool in the hands of cities seeking to pursue, or to make a statement regarding, social and economic goals, particularly those that are hotly contested.”); Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1995 (2018) (examining “the spread of the new preemption and explor[ing] the legal doctrines available to local governments for challenging it”).

<sup>306</sup> See, e.g., Clarence N. Stone, *Local Citizens and the Political Order of Cities*, in THEORIES OF URBAN POLITICS 257, 264 (Jonathan S. Davies & David L. Imbroscio eds., 2009) (“Since change is not readily achieved by pulling a single lever, mobilising for change is likely to be beyond the capacity of those who are lightly resourced.”).

## V. CONCLUSION

This Article has explored how a single institutional design choice—part-time city councils—has systematic implications for city power. By developing a taxonomy of how the part-time model can both produce power vacuums and redistribute power, as well as advancing a normative argument about the institutional legitimacy of city councils, this Article makes a novel contribution to local government literature and provides a framework to clarify and refine our intuitions about the connections between institutional design and city power.

While this Article seeks to draw attention to the understudied impacts of internal structures on the distribution of power in governance systems, I do not suggest that these impacts should be the only criteria in local government institutional design decisions. Nor do I suggest that institutional design is the most important determinant of power dynamics in governance. Other factors, such as background principles of state law and market forces, have just as much or more salience in shaping power relationships. But by exploring the power dynamics associated with part-time city councils, the account offered here aims to foster a more doctrinally complete and civically productive dialogue about local government institutional design, as well as to engage with scholars, policymakers, and citizens in thinking about more deeply about the policy implications of organizational structures in our cities.